# United States Court of Appeals for the Second Circuit



# APPELLEE'S APPENDIX

## 76-1444

In The

## United States Court of Appeals

For the Second Circuit

UNITED STATES OF AMERICA.

Plaintiff-Appellee,

US.

HAROLD JACOB MIMS,

Defendant-Appellant.

Appeal From The United States District Court For The Western District Of New York

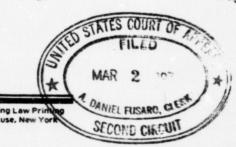
APPENDIX FOR APPELLEE

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(S2666 - 8706)



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### EXCERPTS OF TRANSCRIPT OF TESTIMONY.

UNITED STATES OF AMERICA
IN THE DISTRICT COURT OF THE UNITED STATES
FC. THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,	
-vs- )	
HAROLD J. MIMS,	CR: 1975-160
Defendant. )	
)	

#### APPEARANCES:

RICHARD J. ARCARA, ESQ.
United States Attorney
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Appearing on behalf of the Government.

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Appearing on behalf of the Defendant.

\* \* \* \* \* \*

#### (Recess taken.)

#### ELBERT LOCKHART.

called as a witness by the Government, being first duly sworn testified as follows:

#### DIRECT EXAMINATION

#### BY MR. HOULIHAN:

- Q Mr. Lockhart, by whom are you employed?
- A By the FBI.
- Q How long have you been with the FBI?
- A Approximately nineteen years and five months.
- Q And during that period of time that you have been with the FBI what have been your duties?
- A I examine items of evidence to determine if there are any latent fingerprints which may be fingerprints, palm prints, toe prints or footprints present on this evidence. I compare latent prints against the known prints of individuals to determine if they were made by one and the same person, and if requested to do so, I will testify my finding.
- Q Where is your headquarters?
- A Washington, D. C.
- Q Would you tell the members of the jury what an inked fingerprint is?
- A This is a reproduction of the ridges on the underside of the fingers, and this is usually accomplished by applying

- a thin film of printers ink onto these ridges and then transferring it onto a fingerprint card.
- Q What is a latent fingerprint?
- A To explain, the underside of the fingers are covered with raised portions of skin called friction ridges. When these ridges become covered with perspiration, oil, grease, blood or some other for ign matter and an object is touched by these ridges, it will usually leave an outline of those ridges on that object. The word "latent" means hidden, and usually requires some type of development in order to make it visible.
- Q And you use a fine dust to bring out latent fingerprints, is that right?
- A You can on certain objects such as glass, tile, metal, papers and items that are processed by chemical.
- Q But on glass you would use dust?
- A A powder, yes.
- Q How are fingerprints compared and identifications effected?
- A Fingerprints are compared by comparing the characteristic ridge detail into prints to determine whether or not they match. Now this characteristic ridge detail that I referred to are ending ridges, one ridge which divides or separates into two or more separate ridges, an island or enclosure, or a dot.
- Q What are the basic factors in the use of fingerprints as a

#### means of identification?

- A It is my opinion that the ridge arrangement on every finger of every person is different. And this ridge arrangement does not change from the time of birth until after death, when decomposition sets in. Fingerprints are a positive means of identification, inasmuch as no two have ever been found to be identical unless they were made by the same person.
- Q I show you Government's Exhibit 18 marked in evidence.
  Have you seen that before?
- A Yes, I have.

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- Q And where did you see it?
- A At my headquarters in Washington, D. C.
- Q I show you Government's Exhibit 17 marked for identification. Can you tell me what that is?
- A Yes. This is a latent lift.
- Q Did you compare the latent lift that appears on Government's Exhibit 17 marked for identification with the print that appears on Government's Exhibit 18 in evidence?
- A Yes, I did.
- Q What was the result of your examination?
- A I found there were --

THE COURT: So that the jury will understand, G-18 is the known fingerprint of this defendant?

- A Yes. I found that two latent fingerprints appearing on this latent lift marked C-17 and left index finger print and the left middle finger print appearing on this finger-print card marked Government's Exhibit 18 were made by the same person.
- Q Have you charted enlargements illustrating this identification?
- A Yes. I have a charted enlargement of one of the identifications.
- Q And that would be one of the prints on Government's Exhibit 17?
- A Yes, that is correct.
- Q An enlargement of one of the prints, on the inked fingerprint card?
- A Yes, that's correct.
- Q Do you have those with you?
- A Yes.

MR. HOULIHAN: Would you mark this for identification?

(Government's Exhibit 19 marked

#### for identification.)

Q I'm showing you Government's Exhibit 19 marked for identification, and there is a latent fingerprint and another fingerprint labeled "inked fingerprint," and would you please demonstrate to the jury what that is?

A Yes, I will.

May I approach the jury, Your Honor, and stand in front of them?

THE COURT: It will be better if you can sit there, because if you get away from the microphone, there may be some difficulty for the Reporter.

THE WITNESS: This photographic enlargement marked "Latent Fi perprint --"

THE COURT: Just a moment. We have got another microphone with a long cord on it, and if that will help you, you can put that in front of the jury, and then you can go down there.

(Pause in the proceedings.)
(Witness complies.)

THE WITNESS: This marked "Latent Fingerprint" is a photographic enlargement of one of the latent prints which appears on Government's Exhibit No. 17. This is a photographic enlargement of the corresponding area of the left index fingerprint appearing on this fingerprint card market Government's Exhibit No. 18.

THE COURT: Now that is the

#### known fingerprint?

A Yes. The numbers, lines and lettering I placed on here for illustration purposes only. Beginning with the latent fingerprint, near the top center of the photograph is one line which flows up from your right, and at the end I labeled this Point No. 1.

Going to the next adjacent ridge and following it downward, there is a ridge which divides into two separate ridges. I labeled this as Point No. 2. And the ink prints near the top center of the photograph is this same line, same ridge, that comes up and ends Point No. 1, the one to the next adjacent ridge, and following it downward, it divides the two separate ridges just as it does in the latent fingerprint Point No. 2.

From Point No. 2 in the inked fingerprint, counting across eight intervening ridges is a ridge which divides into two separate ridges. I labeled this as Point No. 3.

In the latent fingerprint from Point No. 2, counting across eight intervening ridges is this same ridge which divides into separate ridges just as it does in the inked fingerprint.

From Point No. 3, in the inked fingerprint, counting at an angle across one, two intervening ridges is one ridge which divides into two separate ridges. I labeled this as Point No. 4. From Point No. 3 in the latent finger-

print, counting across one, two intervening ridges is the same ridge which divides into two separate ridges, Point No. 4.

The remaining points are explained in a similar manner, that is, in the same relative position to each other, such as from Point No. 1 to Point No. 13 is only one intervening ridge. From Point No. 2 to Point No. 13, one intervening ridge. This mark here (indicating) is a small scar in the ink print. In the latent print, the same mark appears.

Based on the points that I have explained, plus others which are charted and others which I did not mark, it is my opinion that the latent fingerprints which appears on this latent lift marked Government's Exhibit 17 and the left index fingerprint appearing on this fingerprint card marked Government's Exhibit 18 were made by one and the same person and could not have been made by any other person.

Now based on a similar type of comparison, I found that one additional latent fingerprint appearing on the same lift and the left middle fingerprint appearing on the same fingerprint card were made by the same person.

MR. HOULIHAN: On the basis of that testimony, I offer Government's Exhibits 16, 17, 18 and 19. I'm sorry -- Government's Exhibit 18 is already in evidence.

MR. AMOROSO: I'm going to object

on the grounds that these have not been sufficiently connected to this defendant in any way, shape or form and have no probative value in this case.

THE COURT: Objection is overruled.
They are received in evidence.

(Government's Exhibits 16, 17 and 19 marked in evidence.)

#### DIRECT EXAMINATION CONTINUED

#### BY MR. HOULTHAN:

- Q Mr. Lockhart, how long have you been in fingerprint work?
- A Approximately, nineteen years and five months.
- Q Does your experience include the lifting of latent fingerprints?
- A Yes, it does.
- Q And in the course of your experience, have you also had experience with how long fingerprints would last on a particular surface?
- A Yes, I have had some experience with that.
- Now based on your experience in fingerprinting, do you have an opinion as to how long a fingerprint would last on an exterior window where the car was enclosed in a parking garage?
- A Are you referring to this latent fingerprint?
- Q Yes. I am referring to that latent fingerprint that is

Government's Exhibit 17 in evidence, and do you have an opinion as to how long that print was on a car where the fingerprint was lifted from an exterior window on the driver's side of the car and the car was parked in an anchesed parking garage?

MR. AMOROSO: I object. No foundation.

THE COURT: Objection is overruled.

THE WITNESS: Due to my experience and due to the clearness of this latent fingerprint, it is my opinion that it had only been on there approximately tive or six days at the most. It could have been on there longer, but that is only my opinion.

Q When you say that it could have been on there longer, would this be under more ideal conditions?

MR. AMOROSO: I'm going to object to that, your Honor.

THE COURT: Objection is overruled.

- Yes. It could have been under more ideal conditions, such as a latent fingerprint that is on the inside of a car or the inside of a building such as glass, or tile, or wood.
- Based on your experience, what if the fingerprints were on an exterior window of an automobile and the automobile we parked in the sun? About how long would that last?

MR. AMOROSO: I'm going to object,
Your Honor. Now we are getting far afield.
THE COURT: Objection is overruled.

THE WITNESS: This would depend somewhat on the latent fingerprint itself, how much oil, acids, perspiration, that caused this latent print to be there to begin with, or was it some other foreign ma:ter, plus perspiration or grease or acids. It is very difficult to tell. I just can't say.

MR. HOULIHAN: That is all the questions I have of this witness.

#### CROSS EXAMINATION

#### BY MR. AMOROSO:

- Q Mr. Lockhart, did you receive any other latent fingerprints from Mr. Raleigh from the Monroe County Sheriff's Office, from Mr. Yazback?
- A Yes. There were fourteen cards bearing sixteen of those latent lifts.
- Q Were they the same?
- A I don't understand what you mean by "the same."
- Q .... you identify those latent prints as belonging to any particular individual or the other latent prints?

\* \* \* \* \*

Rochester, New York
Wednesday, July 14, 1976
2:10 p.m.

(Trial resumed; jury present.)

#### WILLIAM L. KING,

called as a witness by the Government, being first duly sworn, testified as follows:

#### DIRECT EXAMINATION

#### BY MR. HOULTHAN:

- Q By whom are you employed?
- A The City of Rochester Police Department.
- Q How long have you worked for the Rochester Police Department?
- A It will be twelve years this August.
- Q What is your rank?
- A At this time I am a detective, six.
- Q A detective?
- A Yes, sir.
- Q What are your duties at the Police D partment?
- A I am in charge of the Stolen Auto Squad.
- Q Did you work for the Rochester Police Department in July of 1975?
- A Yes, I did.
- Q And did there come a time that you received a report of a

#### William L. King for Government, Direct.

brown Pontiac LeMans being found at St. Mary's Hospital?

- A Yes, sir.
- Q Can you rell me when that was?
- A That was on July 9th, 1975, sir. I received notification that the car had been found.
- Q What, if anything, did you do after you received notification?
- A At this time, sir, I directed to have the car towed to the Public Safety Building Garage and notified Agent Manning from the FBI Office in regards to the automobile.

MR. HOULIHAN: Would you mark these for identification?

(Government's Exhibits 14 and 15 marked for identification.)

- Q Detective King, I show you Government's Exhibit 14 marked for identification. Can you identify what that is?
- A Yes. It is a photograph of a '73 Pontiac that was recovered. It was originally stolen in Buffalo and towed to be Public Safety Building.
- Q bid that automobile have plates on it?
- A No, sir, it did not.
- Q Were you able to identify the vehicle identification number?
- A Yes, sir, I was.
- Q And were you able to trace the owner?
- A Yes, sir.

- Q And who was the owner?
- A The owner came back to a T. Woodard out of Buffalo, New York.
- Q Were you able to determine the license number of that car?
- A The license number at the time of the theft was supposedly 109EFL.
- Q During the course of your examination of that automobile, did you look on the floor of the car, too?
- A Yes, I did.
- Q In particular, did you look at the ignition?
- A Yes, I did.
- Q What was the condition of the ignition?
- A The locking steering device for the ignition on the column had been broken away, chewed away, the outer, what they call the lips of it, so that a key or any other object could not be inserted into it in order to start the car.
- Q I show you Government's Exhibit 15 marked for identification. Can you tell me what that is?
- A Yes, sir. It is a photograph showing the locking steering column as it had been chipped away on the '73 Pontiac, which I had towed.
- Q Does that photograph fairly represent the condition of the steering column at the time that you saw it?
- A Yes, it does.
- Q And Government's Exhibit 14 warked for identification, does

that fairly represent the car that you saw on that day?

A Yes, sir, it is.

MR. HOULIHAN: I offer Covernment's Exhibits 14 and 15.

MR. AMOROSO: May I ask some

preliminary questions?

THE COURT: All right.

#### VOIR DIRE EXAMINATION

BY MR. AMOROSO:

- Q Mr. King, do you know when these photographs were taken?
- A When they were taken?
- Q Yes.
- A The same day, the 9th, when we recovered the car, the 9th of July.
- Q Were you present when the photographs were taken?
- A No, sir. I had left already
- With respect to Government's Exhibit 15, in your expertise as a member of the Auto Theft Squad of the Rochester rollce Department, did you make a determination as to when the damages were done to the strering column?
- A Yes, I did.
- Q What was that determination?
- A The determination was that was done after the car was parked. It was not done to steal the car. The car could not be driven in that condition.

- Q It could not be ariven?
- A It could not be driven. It was done after it was parked.
- Q were these photographs taken down at St. Mary's Hospital?
- A No. It was taken at the Public Safety Building Garage, 150 South Plymouth Avenue.

MR. AMOROSO: May I have a moment

please, Your Honor?

(Pause in the proceedings.)

MR. AMOROSO: I have no objection.

THE COURT: They are received.

(Government's Exhibits 14 and

15 marked in evidence.)

#### DIRECT EXAMINATION CONTINUED

#### BY : HOULTHAN:

- Q Detective Fing, did I understand you correctly that this car couldn't have been driven there in that condition with the damage to the ignition that way?
- A Right, sir.
- Q Does that mean there must have been a key beforehand?
- A Yes. There had to be a key inserted to release the transmission lock and the locked steering column in order to drive that vehicle.
- So the damage was done after the car had been parked and abandoned at the St. Mary's Hospital?
- A Yes, sir.

#### William L. King for Government, Cross.

- Q Cen't you "jump" cars?
- A Yes.
- Q Can't you "jump-start" cars?
- A Yes, you can, but not with a locking steering column.
- Q And this has a locking steering column?
- A Yes, it does.
- Q So this car couldn't have been started any other way without a key?
- A Right. It had to have a key in order to be driven.

MR. HOULIHAN: I have no further questions.

#### CROSS EXAMINATION

#### BY MR. AMOROSO:

- Now Officer King, you have been a member of the Rochester Police Department for twelve years, have you not?
- A Yes, sir.
- And prior to your going into the Auto Squad, you were a regular patrolman working in the blue and white automobile, isn't that correct?
- A Yes, sir.
- Q When did you first go on the Auto Squad?
- A It will be two years, sir.
- Q You did not, as a matter of fact, come upon this automobile of your own knowledge, but you were advised by someone that this vehicle was at St. Mary's Hospital, is that

#### correct?

- A Sir, a report was made out by a police officer that the vehicle was at that location, at St. Mary's Hospital.
- Q Do you have that report with you?
- A Yes, I do.

MR. AMOROSO: May I see it,

#### please?

(Report handed to Mr. Amoroso.)

- Q There was a report made by someone at the hospital that that automobile was there for approximately four days, isn't that right?
- A According to this report, yes, sir.
- Q Right, and you got involved on the 9th, and that would mean it would have been July 5th?
- A Yes, sir.
- Q You don't know whether or not that vehicle was there prior to the 5th of July, is that correct?
- A No, sir, I de not.
- Q Calling your attention to Government's Exhibit 14, this is a photograph that fairly and accurately depicts the vehicle that you recovered at St. Mary's Hospital, is that right?
- A No, sir. It is a picture of the vehicle that I examined in the Public Safety Building Garage at 150 South Plymouth Avenue.

. . . . . .

further questions.

MR. HOULIHAN: I have no further questions.

(Witness excused.)

JOHN G. GREEN,

called as a wicness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

#### BY MR. HOULIHAN:

- Q Special Agent Green, by whom are you employed?
- A The Federal Bureau of Investigation.
- Q How long have you worked for the FBI?
- A Thirteen years.
- Q Where is your duty station?
- A In Buffalo, New York.
- Q On July 1st, 1975, were you stationed in Buffalo, New York?
- A I was.
- At that time in the course of your duties as a Special
  Agent, were you assigned to assist in an investigation
  involving a bank robbery at Marine Midland Bank, BuffaloElmgrove, in Gates, New York?
- A I was.
- Q And in the course of this investigation, did you have occasion to Batavia, New York?
- A I did.

- Q What, if anything, did you do when you arrived in Batavia?
- A In Batavia, New York, the New York State Police told us there was an individual that they felt was involved in the bank robbery, and myself and another agent went to interview him.
- Q And who was that suspect?
- A The defendant, Harold Jacob Mims.
- Q Would you please tell the Court what he is wearing today?
- A He has a peach-colored suit on.

MR. HOULIHAN: Let the record show he is identifying the defendant.

- Q Special Agent Green, did you have an interview with Mr. Mime?
- A I did.
- Q Where did the interview take place?
- A The second floor of the New York State Police Barracks at Batavia.
- Q What, if anything, did you say to Mr. Mims when you first arrived at the second floor office?
- A The first thing I did was advise him of my identity as a Special Agent of the FBI and also advised him of his rights not to talk --

MR. AMOROSO: Objection, Your

Honor. Conclusion.

THE COURT: What is that?

MR. AMOROSO: Objection, conclu-

sion.

THE COURT: He isn't finished

yet.

- Q What rights did you advise him of?
- A That he had a right to remain silent; that he had a right to have a lawyer present; that he had a right to stop answering questions at any time that he wanted to until a lawyer was present; that if he could not afford a lawyer one would be appointed for him by the Court.

THE COURT: Did you use the printed form of the Miranda warning?

- A I did.
- Q Do you have that form?
- A I do not have it with me.
- Q Did Mr. Mims state anything to you after you advised him of those rights?
- York State Police that he was arrested for his participation in the bank robbery at Gates, New York.
- Q Did he execute an Advice of Rights form and Waiver of Rights form?
- A He did.

THE COURT: Have you got that?

MR. HOULIHAN: I don't have it,

Your Honor. I don't have the form in the courtroom, and I'm not sure if it is in my office. I would have to check. It was previously marked as an Exhibit in this case.

THE COURT: That is why it is important to have it here.

MR. HOULIHAN: May we have a short recess to see if I can find it? I assume it is in my office or upstairs in the FBI office.

THE COURT: Not only should we have that, but we should have the printed form of the Miranda rectal of the Constitutional Rights.

MR. HOULIHAN: Yes, Your Honor.
THE COURT: We will take a recess

at this time.

(Witness temporarily excused.)
(Recess from 3:40 p.m. to

4:35 p.m.)

(Jury not present.)

MR. HOULIHAN: The Government calls James Miller.

MR. REGAN: My name is John Regen.

I have been assigned to represent the witness who has been called to testify.

THE COURT: You haven't been assigned by me. What do you mean that you have been assigned?

MR. REGAN: I have been assigned to represent Mr. Miller in the indictment that is now pending against him in the October, 1975, indictment -- my copy doesn't have a number on it.

THE COURT: Have you got it there?

MR. REGAN: Have I got what?

THE COURT: The assignment.

MR. REGAM: No, I don't have a copy of the assignment, Your Honor.

I was assigned by the United States Magistrate, Mr. Stephen Joy.

THE COURT: That is all right.
I didn't know that.

MR. REGAN: Now Mr. Houlihan
notified me that he wanted Mr. Miller to
take the witness stand. Now in respect
to the pending indictment, I have discussed
with Mr. Miller the question of immunity

and the proposed Order of Immunity in respect to his testimony under Title 18, Section 6002 and 6003. I have explained to him what the Order of Immunity will mean and that if you sign it, that it will require him to testify. I have not discussed with him any subject matter of the testimony, nor do I have any idea what questions Mr. Houlihan intends to ask him. I have reviewed with Mr. Houlihan the statutor, procedure, and I have requested that he show me a copy of the original Order and --

THE COURT: What original Order?

MR. REGAN: The Order granting immunity.

THE COURT: There has been no Order granting immunity yet, and I won't grant an Order of Immunity until we examine Miller and determine that he will not testify.

MR. REGAN: I was informed that he had already refused to testify.

THE COURT: He may have. I don't know anything about that.

MR. REGAN: Then maybe we better go through the preliminaries.

I will counsel Mr. Miller that in the absence of such an order not to testify, and to take the Fifth Amendment.

THE COURT: That is what the Order of Immunity does.

MR. REGAN: I understand, but if Your Honor says that it hasn't been signed and you want him to take the itness stand in advance of signing it, I will instruct Mr. Miller not to testify until such order is signed.

THE COURT: There has been no evidence before me that Miller has refused to testify.

MR. REGAN: All right. I thought there had been.

You had better put him on.

THE COURT: The basis of the Order is that James E. Miller has refused to answer questions relating to the said investigation and has asserted his privilege not to incriminate himself under the Fift. Amendment.

There is nothing that has established that he has refused to testify. Until he does so, there is no purpose of my granting immunity.

MR. REGAN: Correct, Your Honor.

I thought that it had been done.

I was wrong, Your Honor. Your Honor did assign me to represent Miller on the 5th day of December, 1975.

THE COURT: That is all r ght.
I had forgotten that.

MR. REGAN: All right, Your Honor.

JAMES E. MILLER,

called as a witness by the Government, being first duly sworn, testified as follows:

#### DIRECT EXAMINATION

#### BY MR. HOULTHAN:

- Jail, is that right?
- A Auburn Correctional Facility.
- Q And that is in connection with a bank robbery in Livingston County, is that correct?
- A I will take the Fifth Amendment on that question.
- Q On July 1st, 1975, were you in Rochester, New York?
- A No, sir.

\* \* \* \* :

Rochester, New York
Friday, July 16, 1976
10:00 a.m.

(Trial resumed; jury present.)

JOHN G. GREEN,

called as a witness by the Government, having been previously sworn, testified further as follows:

#### DIRECT EXAMINATION CONTINUED

#### BY MR. HOULTHAN:

- Q When we recessed yesterday, Special Agent Green, you just described that you advised Mr. Harold Jacob Mims of his rights?
- A Yes.

MR. HOULIHAN: Would you mark these for identification?

(Government's Exhibits 35 and

36 marked for identification.)

- Q I show you Government's Exhibit 35 marked for identification. Can you tell us what that is?
- A Yes. This is our standard Advice of Rights form and a waiver of those rights, which I showed to the defendant, that I gave to the defendant to read.
- Q And did he read it in your presence?
- A Yes, he did.

- Q And did ne sign it?
- A Yes, after he said he understood his rights, he signed it, "Jacob Harold Mims."
- Q And that is his signature that appears on the bottom of it, is that right?
- A That is correct.
- Q And then it is witnessed by two agents, M. Dennis
  Sculimbrene and John Green. And you are the "Green"?
- A I am. That is my signature.

MR. HOULIHAN: I offer G-35

in evidence.

MR. AMOROSO: May I see it,

please?

(Government's Exhibit 35 handed

to Mr. Amoroso.)

MR. AMOROSO: May I have one or two preliminary questions, Your Honor?

#### VOIR DIRE EXAMINATION

#### BY MR. AMOROSO:

- Q Agent Green, when you say the defendant "Harold Mims," you mean the man sitting at the cable with the orange cost?
- A That's correct.
- Q When you say that he read it, do you mean that he read this out aloud?

- A No, he did not. He read it to himself.
- Q In other words, you don't know if he read it or nc:? He looked at it, is that what you mean?
- A He told us he read it, and he understood it.
- Q He told you that he read it and understood it?
- A Yes.

MR. AMOROSO: May I have a moment, please, Your Honor?

(Pause in the proceedings.)

offer as improper foundation being laid by the United States Attorney,

THE COURT: Objection is overruled. It is received in evidence.

MR. AMOROSO: May I have an exception, Your Honor?

THE COURT: Yes.

(Government's Exhibit 35 marked

in evidence.)

#### DIRECT EXAMINATION CONTINUED

#### BY MR. HOULTHAN:

- Q Special Agent Green, Government's Exhibit 35 in evidence has a time "11:46 a.m." at the top. What does that time refer to?
- A That is the time right before the form was given to the

defendant to read.

- Q And the time down at the bottom "11:50 a.m."?
- A That is the time that we received it back from him after he signed it.
- Q And what date was that signed?
- A That was on July 1st, 1975.
- Q And what place?
- A Batavia, New York.
- Q I show you Government's Exhibit 36 marked for identification. Can you identify what that is?
- A This is an interview log kept by Special Agent Sculimbrene during the course of our time with the defendant, Jake Mims.
- Q And that was what day?
- A On July 1st, 1975.

MR. AMOROSO: Excuse me, Mr.

Houlihan. May I see you a moment, please?

- Q Would you explain to the jury what an interview log is?
- A One of the regulations of the FBI is that when we talk
  to an individual who is a suspect in the commission of
  any crime that we must keep an interview log of the events,
  the lime at the beginning of the interview, the times that
  he makes phone calls, allowed to make phone calls, and it
  is a record of the events that happen during the course of

the interview with the individual that we are talking to.

- Q Subsequer to the signing of the waiver of rights, which is Government's Exhibit 35 in evidence, what, if anything, did Mr. Mims say to you?
- A Now. Mims told us that he had been arrested by the New York
  State Police, and he thought it was for his participation
  in a bank robbery at Rochester, New York.
- Q And did he tell you what kind of a car he was driving?
- A Yes, a Cadillac, 1972 Cadillac.
- Q And who the owner was?
- A He told us the car belonged to one James Miller.
- Q Was there any further discussion at that time?
- Yes, there was. He told us the names of two of the participants in the bank robbery. He told us that his brother, Malachi Mims, had been arrested by the State Police for the participation in the same bank robbery. He told us that the loot from the bank robbery was in the trunk of the car that his brother Malachi was driving, and he also told us the guns that were used in the bank robbery were in the trunk of the car that his brother, Malachi Mims, was driving. He told us that he had been in the general vicinity when the bank was robed. He had seen a police officer go into the bank while the individuals robbing the bank were inside. He told us that he left the area of the bank and then met the participants

in the bank robbery in a school yard, a short distance from the bank and was there when the money from the bank robbery was taken from the car used in the bank robbery, into the car that his brother Malachi was driving as well as the guns and some of the clothing.

- Now you say he identified two participants in the bank robbery. Who were they?
- A He said that his brother, Malachi Mims, and James Miller.
- Q Did there come a time that Mr. Mims asked to speak with his attorney?
- A Yes, there did. He asked to speak first to his attorney and then also to another special agent of the FBI, Special Agent Richard Scaller.
- Q Was Harold Jacob Mims allowed to call his attorney?
- A Yes, he was. An attempt was made to contact his attorney.
- Q And do you know what time he was permitted to make that call?
- A I would need the interview log to give the time.

(Government's Exhibit 36 handed to the witness.)

THE WITNESS: This is recorded at 12:35 when he was allowed to make a call to his attorney's office.

- Q Did you continue to question him at that time?
- A After he requested to talk to his attorney and to Special

Agent Schaller, we terminated the interview. We stopped questioning him about the bank robbery itself.

- Q Did there come a time that Special Agent Schaller arrived?
- A Yes.
- Q And were you present at that time?
- A I was present when he arrived.
- Q And were you with Special Agent Schaller with Mr. Misse for any period of time?
- A For a short period of time, yes.
- Q What, if anything, did you hear at that time?
- A Special Agent Schaller, when he first arrived, again orally advised the defendant of his rights as contained in the Advice of Rights ....., and he also told him that --

MR. AMCROSO: I object. Now the

Agent is reading from something that is not in evidence.

THE COURT: Objection is overruled.

- would not be in a confidential nature and would be used against him or could be used against him a court of law.
- Q Did there come a time when Special Agent Schaller and Mr. Mims were left alone?
- A Yes, there did.
- Q At whose request?

A At the defendant Jake Mims' request.

MR. AMOROSO: I'm going to object to that characterization.

THE COURT: The objection is overruled.

- Now the events that occurred subsequent to that would be in the particular knowledge of Special Agent Schaller, is that correct?
- A That is correct.
- Q Did there come a time that you again spoke with Harold Jacob Mims?
- A There did on July 2nd, 1975.
- Q That was the next day?
- A That's correct.
- Q Where was that?
- A We started in the U. S. Marshal's Office in Buffalo and went from there to a courtroom that is not used in Buffalo.
- Q What prompted you to talk with him on that day?
- A We were notified by the U. S. Marshal in Buffalo or the Deputy U. S. Marshal in Buffalo that Jake Mims wished to talk to me.

MR. AMOROSO: I object, Your

Honor .

THE COURT: Objection is over-

ruled.

- Q Please go ahead.
- A le were notified by the Deputy U. S. Marshal in Buffalo that the defendant, Jake Mima, wished to talk to me up in the Marshal's Office after his hearing before the United States Magistrate in Buffalo.
- Q And did you then go up and talk with him?
- A Yes, I did.
- Q When you arrived to talk to him, were you alone?
- A No. Special Agent Sculimbrene was also with me.
- Q What, if anything, did you say to him when you saw him on that day?
- A The first thing that we did was again give him an Advice of Rights form to read and asked him to sign a waiver of those rights.

(Government's Exhibits 37 and

# 38 marked for identification.)

- Q I show you Government's Exhibit 37 marked for identifica-
- A This is the standard Advice of Rights form which was given to Jake Mims at the beginning of the interview on July 2nd, 1975.
- Q What time was that given to him?
- A 1:46 p.m.
- Q Did he read it?
- A He mid that he read it, and he said that he understood it.

- Q Did he sign it?
- A Yes, he did.
- Q And that is his signature that appears on there?
- A That is correct.
- Q It is "Jacob H. Mims," is that right?
- A That's correct.
- Q And you signed as a witness to that, is that correct?
- A I did.

MR. HOULTHAN: I offer G-37.

MR. AMOROSO: I object on the grounds there has been no poper foundation laid.

THE COURT: Objection is overruled.

(Government's Exhibit 37 marked in evidence.)

- Q I show you Covernment's Exhibit 38 marked for identification, and can you tell me what that is?
- A This is an Interview Log that was kept during the course of the interview with Jake Mims on July 2nd, 1975.
- Q And your signature appears on that, is that correct?
- A Yes, it does.
- When referring to Jake Mims, with regard to Government's Exhibit 37 and Government's Exhibit 38, who are you referring to?

A The defendant.

MR. HOULTHAN: I offer C-38.

MR. AMOROSO: Can I see that?

(Government's Exhibit 38 handed

to Mr. Amoroso.)

VOIR DIRE EXAMINATION

BY MR. AMOROSO:

- Q Agent Green, of course, when you say "Jake Mims," you mean the deferdant, Harold Jacob Mims, don't you?
- A Yes, I do.
- Q Agent Green, did you prepare this log yourself?
- A No, I did not.
- Q Do you know who did?
- A Yes, Special Agent Sculimbrene.
- Q Where did he do it?
- A Right there at the time of the interview.
- Q In other words, you were there at all times?
- A Vpe
- Q He prepared that in your presence, is that correct?
- A That is correct.
- Q This is what you would call an original part of your original notes kept in the ordinary course of business as an FBI agent, isn't that correct?
- A That is kept contemporaneous with the interview.
- Q Is this part of what you would call the original notes

that you took with respect to your investigation in this case?

- A No, they would not be.
- Q There is a difference?
- A There is a difference.
- Q And you do not, as you do with your original notes in an investigation of a case of these Interview Logs, transcribe them on a 302 Form?
- A No, we do not.
- Q So you do not have a 302 Form for this Gove nment's Exhibit 38?
- A No.

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MR. AMOROSO: Your Honor, I must object on the offer by the Government, because it is highly prejudicial material that is contained in this Exhibit.

THE COURT: I would think so.

That is why they took the statement.

Objection is overruled.

MR. AMOROSO: Your Honor, I would beg the Court to look at this before it rules on that, please.

MR. HOULIHAN: Your Honor, there is one portion that I would be willing to cross out of this. May we

approach the beach?

in the case at all.

THE COURT: Let me see it.

(Government's Exhibit 38 handed to the Court.)

(At the bench.)

(In open court.)

MR. HOULTHAN: May I have this cut-out portion marked as an Exhibit?

THE COURT: I don't want that

MR. HOULIHAN: I would like to mark it so I will know where it came from.

May we mark it as Government's Exhibit 384, and I won't offer that portion.

MR. AMOROSO: All right.

(Government's Exhibit 38A marked for identification.)

MR. HOULIHAN: And Government as Exhibit 38 is received in evidence, Your Honor?

THE COURT: It is received in evidence.

(Government's Exhibit 38 marked in evidence.)

### DIRECT EXAMINATION CONTINUED

## BY MR. HOULTHAN:

- Q Special Agent Green, would you please tell the members of the jury what, if anything, Mr. Mims told you after he signed his waiver of rights?
- The defendant Mims told us that he wanted to give us his version of the bank robbery that happened on July 1st.

  He stated that around December of 1974 he had been contacted by James Miller, an individual named Eddie Lee

  Thomas, and an individual named Voight about robbing some banks in the Buffalo, New York, area. He said that with these individuals they had "cased" a few banks in the Buffalo area.

MR. AMOROSO: Your Honor, I'm going to object to all of this as being highly prejudicial.

THE COURT: Objection is overruled.

these banks in the Buffalo area, that he, the defendant, for some reason or another, or for security reasons, turned down the robbing of these particular banks. Then in June of 1975 they came to Rochester in order to look over some banks here and that they finally decided on the Marine

Midland Bank near the Kodak plant.

THE COURT: That is the Elmgrove Branch.

Your Honor, the Marine Midland Bank near the Kodak plant. I'm not familiar with Rochester, Your Honor, and I am not aware of exactly where the Elmgrove Branch is. He did tell us it was the bank that was robbed on July 1st.

He said that Voight went into the bank on the day they came over and decided on that particular bank, that he came out and then drew a diagram of the bank, of the inside of the bank; that on the day before the bank was robbed, that one James Miller went into the bank and talked to one of the employees about opening an account at that bank. Here, again, the purpose of it was to "case" the bank itself. He told us that on the day of the bank robbery, which was July 1st, 1975, that Miller, Eddie Lee Thomas, that his brother Malachi and himself all met at an apartment in the Williamstown

Apartments in Cheektowaga early in the morning.

- Q Special Agent Green, may we go back to the day before the bank robbery, and did he tell you what Mr. Miller was wearing when he went in the day before the bank robbery?
- A Yes. He described James Miller as having a light beard, wearing a hat, and had on dark sunglasses.
- Q And was there any conversation concerning a 1973 LeMans?
- A Yes. The defendant told us that a 1973 LeMans had been stolen in Buffalo prior to the bank robbery and several days before the bank robbery it was brought over to Rochester and parked in the airport parking lot and was going to be used as a getaway car for the bank robbery.
- Q Will you refer now to any conversation that you had with him regarding the day of the bank robbery?
- As I said, they met in the apartment at Cheektowaga, and that James Miller asked Jake Mims to drive his Cadillac to Rochester and that Miller, and I mink he said Thomas, drove in the Cadillac to Rochester with him; that his brother Malachi drove over in a Camaro, '72 blue Camaro, by himself, and that he, Thomas and Miller went to the airport and picked up the LeMans and that they went to a school yard in the general area of the bank. In fact, he even told us that they made a practice run, that it was 2.8 miles from the bank, and it took four minutes to

drive; that they left the Camero there; that Miller, his brother Malachi and Thomas got into the LeMans, drove to the bank with the purpose of robbing it.

- O I call your attention back to the statement that he said that Miller asked him to drive the car, the Cadillac, to Rochester. Did he say why he was asked?
- A Yes. He said that Miller is not a good driver and that he promised to pay him \$700 for driving the Cadillac.
- Q Would you continue on with any further statements made by Jacob Mims?
  - He told us that he was in the general area of the bank at the time that it was robbed; that he saw a police officer go into the bank while the individuals were inside robbing the bank. He told us he then drow off into a roundabout area, ending up in the school yard where the Camaro had been parked, and that Malachi Mims, his brother, and James Miller, and Eddie Lee Thomas were back there with the LeMans; that they put the loot from the bank into the trunk of the Camaro as well as the guns that were used during the course of the robbery were also put in the trunk of the Camaro. His brother, Malachi, then drowe off, and he said that he drove off in the Cadillac belonging to James Miller and he was not sure, but he just assumed that Miller and Thomas drove off in the LeMans.
- Q If I understand this correctly, Jacob Mims told you that

Malachi Mims, his brother, James Miller and Eddie Lee Thomas went into the bank?

- A That is correct.
- Q And did he tell you that he went into the bank?
- A No, he did not.

THE COURT: Didn't you ask him whether he went into the bank?

- A Yes. He said he did not go into the bank, Your Honor.
- Q Did he say why he was in the area?
- A Yes. He said he was in there because he was concerned about his brother, Malachi, and out of curiosity.
- Q Did Jacob Mims tell you anything about how the Cadillac was going to be returned to Buffalo?
- A Yes. He was to drive the Cadillac back to Buffalo.
- Q Referring earlier in the statement, did Jacob Mims tell you anything about the description of this Voight person?
- A Yes. He told us that Voight was a white male and all the other participants were black.

THE COURT: When you say "all the other participants," you don't mean to say that Voight was a participant in the robbery?

- A No, I do not, Your Honor. I'm sorry.
- Q Did he advise you of anything concerning whether Mr. Voight was to go to the bank or not?

A No. It was decided among them that Elmer Voight would not go into the bank because he was white and would be more distinguishable as to differentiate from them being black.

THE COURT: When you say "would not go into the bank," that seems to connote that Voight was there. He didn't say that Voight was there in the vicinity, did he?

A No, no. He told us that Voight was in the planning and during the course of the planning, it was decided that Voight would not go into the bank. He told us that Voight had been in the bank earlier when they first decided on this bank robbery and that Voight had drawn the diagram of the bank. But during the course of further planning, it was decided that Voight would not go in the bank or be in the area due to the fact that he was white.

MR. HOULIHAN: That is all I

have at this time.

#### CROSS EXAMINATION

### BY MR. AMOROSO:

- Q Agent Green, you, of course, do not have your original notes that you made with respect to this investigation, is that correct?
- A No, I do not.

- Q Those notes have been destroyed?
- A That is correct.
- Q Were those notes that you prepared given to a secretary in the Buffalo Office of the Federal Bureau of Investigation to transcribe?
- A No.
- Q Or were they dictated on a tape machine or something?
- A They were dictated to the secretary, the stenographer.
- Q You did that yourself?
- A Agent Sculimbrene did in my presence.
- Q Was Agent Sculimbrene with you in the morning hours of July 1st, 1975, prior to your going to the Batavia Barracks of the State Police?
- A He was.
- Q When did you first learn of the incident that occurred at the Marine Midland Bank in Rochester?
- A My supervisor received a phone call from the Rochester
  Office that a bank had been robbed in Gates, New York.
  He described, the individual who called my supervisor from
  Rochester, described the account of the bank robbery.
- Q And your supervisor gave you a brief cutline or summary or what have you of the bank robbery, is that correct?
- A That is correct.
- Q Would it be fair to say that you had a pretty good idea what you were looking for when you went to the State

Police Barracks in Batavia, New York?

- A What do you mean? I don't understand what you mean.
- Q Is it a fair assumption to state that you knew that Harold
  Jacob Mims had been arrested?
- A I don't recall if I knew the name of the individual who was arrested. I knew that the State Police in Batavia had two individuals in custody, and whether I knew it was Jake, the defendant, or not, I don't recall.
- Q Did you have any description at all prior to your going to the State Police Barracks of the two persons who were apprehended by the New York State Police?
- A I don't recall that I did.
- Q You knew that they were Megro, didn't you?
- A No. I had been out in the car, and I was notified by radio that there were two individuals in custody at the New York State Police Barracks in Batavia and whether any description was given of them or not, I don't recall. I don't know.
- Q Of course, if it was, you would have written it down in your original notes, would you not?
- A No, I would not, not for a radio message.

THE COURT: The individuals

were then in custody. There wouldn't be

any purpose of giving you their description.

You weren't locking for them?

A No. Well, we were out on the street, yes, looking for them, Your Honor. We were looking for bank robbers, and we were notified there were two individuals in custody at the New York State Police Barracks in Batavia.

> THE COURT: But you were looking for black men?

A Yes, Your Honor.

THE COURT: You didn't know who they had arrested, though?

- A I don't recall that I was notified who was arrested.
- Q At that time your duties as a Special Agent for the Federal Bureau of Investigation in Buffalo consisted of being on the bank robbery detail or what?
- A I am assigned to the squad that handles bank robbery cases, yes.
- Q How long have you been assigned to that squad?
- A Five years.
- Q And you had a fair amount of activity in the Buffalo area with respect to bank robberies, had you not, in those five years, sir?
- A Yes, we have.
- Q And you investigated approximately how many of these bank robberies in Buffalo. New York, and other areas up to the time of this incident?
- A You mean actually cases assigned to me?

- Q Or participated in?
- A I would say approximately three hundred.
- Q And you have taken notes on all of these cases, have you not, sir?
- A No, I have not.
- Q That is not an important part of your job, to take the notes?
- A No. In some, yes, and in some, no.
- Q How about if you were the Case Agent? There is a distinction, is there?
- A It would depend on what your duties are at that particular bank robbery.
- Q Let me ask you this. What are the duties of a Case Agent in the Federal Bureau of Investigation?
- A To solve the case. He gets it assigned to him. It may even be after the fact, by a day, that he gets it assigned to him.
- Q Isn't he like the coordinator, the man who is in charge, and you have to report to?
- A I am the coordinator of the office.
- Q You are?
- A Yes.
- Q Were you the coordinator on this case?
- A Yes, I was.
- Q Who was the Case Agent?

- A Special Agent Manning of the Rochester Office.
- Q When you first got called over the air, or received this message, did you go directly to the Batavia Office, sir?
- A To the New York State Police Barracks at Batavia, yes.
- Q And Agent Sculimbrene was with you?
- A Yes, he was.
- Q Did you go directly to the room where Mr. Mims was?
- A I stopped at the reception desk, and I identified myself, and I was told where the defendant was upstairs and shown how to get up there.
- Q Did you, either prior to going up there or after leaving him, participate in any search of a motor vehicle that was apprehended with respect to this incident?
- A No, I did not.
- I suppose that as an FBI agent and in the course of your employment as such, in your investigation you have taken many statements from people who have allegedly committed crimes, isn't that crect?
- A Yes, I have.
- Q Of course, this is a very serious case, was it not, in your estimation?
- A I think any bank robbery is a serious case.
- Q So in your opinion it would have been very 'mportant to perpetuate any statement that the defendant may have made to you, isn't that correct?

- A What do you mean "perpetuate it"?
- Q Take it down in writing.
- A Not necessarily.
- Q That is not an important part of the case?
- A Taking notes are an important part of the case, yes.
- Q Yes, but you destroyed the notes, and they are not here?
- A That's correct. I did not destroy them. They were destroyed by Agent Sculimbrene.
- Q All right. I'm sorry. I apologize.

Do you know whether or not there was available at the State Police Barracks in Batavia a person to be used to take a stemographic statement from defendants?

- A I have no idea whether there was or not.
- Q Did you ask?
- A No, I did not.
- Q When you took this statement from the defendant, did you reduce that statement to writing?
- A No. I reduced it to dictation. We dictated from the notes
  to the stenographer.

THE COURT: That is writing.

- A Yes.
- Q But you did not reduce it to a writing that he would sign or should sign?
- A I did not.
- Q Did you ask Mr. Mims, "Will you sign a statement"?

- I did not.
- 2 Did Agent Sculimbrene?
- A No, he did not.
- Q Afterwards, did Agent Schaller, do you know?
- A I do not know because Agent Schaller talked to him alone.
- Q Is there such an admission that has been reduced to writing and signed by this defendant?
- A As far as I know, no.
- Q Was there, in fact, any stenographic statement taken from him as far as you know?
- A As far as I know, no.
- Q So in other words, what you are doing here is you are relying specifically upon your memory of this incident, is that correct?
- A No, that is not correct.
- Q It is not?
- A No.
- Q What are you relying on?
- A I am relying on my FD302, which is the statement that is dictated to the secretary, the date that the statement was given to us.
- Q That you took on your original notes which were destroyed by Agent Sculimbrene.

THE COURT: You made quite a point about this destroying of notes.

notes?

Is that the usual practice that when you make notes, simultaneous notes, then as soon as you can, you reduce it to a statement?

A To a statement, Your Honor.

THE COURT: Then you destroy the

A That is correct.

THE COURT: And that is the universal practice?

A That is the usual practice.

MR. AMOROSO: Thank you, Your Honor. You have helped me out considerably.

- Of course, it is a very important part of any investigation with respect to a bank robbery, and we will confine it to that, because that is what your specialty is, Agent Green, that if possible, a description be taken by you, isn't that correct?
- A A description of the individual that I am talking to?
- Q No, a description of any possible perpetrators of the crime?
- A Yes, that's correct.
- Now when you talked to Mr. Mims -- by the way, do you remember what he was wearing?
- A No, I do not.

MR. AMOROSO: Let the record

indicate I am opening a senled evidence bag sealed by the Federal Bureau of Investigation. It has been provided to me by Mr. Houlihan, the United States Attorney.

Would you mark the bag for identification?

THE COURT: What is that being marked for?

'MR. AMOROSO: For identification.

THE COURT: I noticed that you went over to the prosecutor's table and picked that up.

MR. AMOROSO: That's right, sir.

I asked Mr. Houlihan to give me these items,
and he has apparently agreed. Is that
right?

MR. HOULIHAN: Yes.

(Defendant's Exhibit 5 marked for identification.)

- Q I show you Defendant's Exhibit 5 marked for identification, which consists of a plastic bag and several items in here, and ask you if you can identify any of these items in this bag?
- A No, I could not positively identify any of them.
- Q You cannot?

- A I cannot.
- Q 'But if you took them out of the bag and looked at them, might they refresh your recollection?

THE COURT: What are they? Are they clothing, or what?

- Q They are clothes, are they not?
- A They are clothes. It appears to be a blouse, a pair of shoes, and I guess there is a pair of pants in there also.
- Q A pair of brown pants and a pair of shoes, which are two or two and a half-inch heels -- I don't know what they call them, and brown pants and a print shirt, brown and tan and orange, isn't that correct?

THE COURT: As far as you know, have you ever seen those before?

A They appear to be similar to the clothes, as I recall the defendant had on that day, but there is no way that I positively could identify them.

THE COURT: You don't need to identify them. Can you say that they are similar to the caes, or did they look like the ones you saw?

A: I recall, yes.

THE COURT: We still don't know what all the items of that bag are.

MR. AMOROSO: I think we have said that it was a pair of shoes and the shirt which I already described on the record and the pair of brown trousers.

THE COURT: Three items?

MR. AMOROSO: Yes, Your Honor.

- Q You can't specifically say whether or not these are the items that Mr. Mims was wearing, but do you remember having taken the clothes from him?
- A I didn't take any clothes from him, no.
- Q Do you know if any member of the Federal Bureau of Investigation did take the clothes from him?
- A I understand they did, yes.
- Q Who might that be?
- A I don't know.
- Q Do you know when that war done?
- A Either July 1st or July 2nd. I don't know which day.
- O And prior to your discussion with Mr. Mims at the State
  Police Barracks, had you been given an identification in
  any form whatsoever, whether it be by racial identification
  or a type of clothing identification, of the people, wh
  the individuals were who went into the bank and robbed it?
- A If I was, I do not remember it now, but I presume that I was.
- Q And that was prior to going in and speaking with Mr. Mims?

- f. That would be correct.
- Q So in other words, then, getting back to the question I asked you before, you had a pretty good idea of what this case was about, at least the bare bones facts of the case, prior to your talking to Mr. Mims?
- A I knew that a bank in Gates, New York, had been robbed by either three or four individuals.
- Q Who were black?
- A That a car, Pontiac LeMans, with the license number which we had at that time, had been used as the getaway car and that the car showed up in the computer as having been stolen.
- Q Did you have any indication of the types of clothing that were worn by the people who committed this bank robbery?
- A I don'r recall that I did.
- Q If someone rold you that one of them wore a light blue jacket and a wide-brimmed hat, you would have remembered that?
- A Not necessarily, no.
- Q You wouldn't?
- A No, not that day I wouldn't remember.
- O Did you remember it on the day you talked to Mr. Mims?
- A I would assume that I would, but I don't recall anybody telling me the clothing that was worn by the individuals in the bank robbery.

- Q When you went into the room where Mr. Mims was, which was on the second floor of the Barracks of the State Police, was Mr. Mims in there alone at the time?
- A No. There was a State Trooper with him.
- Q What was the name of that State Trooper, by the way, do you know?
- A I don't recall at this date.
- Q Tell me, did you see the other person who the State Police had apprehended, who allegedly was involved in this bank robbery here?
- A He was not at the Barracks when I got there.
- Q Do you know where he was?
- A He was at the hospital for examination.
- Q Do you remember what you said to Mr. Mims the first time you walked into the room?
- A I probably said, "Hi, Jake."
- Q And you proceeded to advise him of his Constitutional rights?
- A Yes, on the Advice of Rights form.

MR. AMOROSO: For the record, that is Government's Exhibit 35 that is in evidence.

- Q Did you have any discussion with him at that point now why he was initially stopped?
- A Not at that point, not at the very beginning. I advised

him of his rights.

- Q After that?
- A All right. I did ask him about what he was doing there, and he said he had been advised that he was taken there because of his participation in a bank robbery at Rochester.
- Q At Rochester, New York?
- A That is what he said, "Rochester."
- Q He didn't tell you which bank?
- A (No response.)
- Q You can refresh your recollection by looking at your 302.
- A At that point, no.
- Q You say that he had admitted that his brother was driving a 1972 Camero automobile, is that correct?
- A Yes.
- Q Before you went in there, did you know what that Camaro automobile had contained?
- A You mean as far as the bank robbery loot and the guns?
- Q Whatever.
- A I don't recall knowing what was in that car before I talked to the defendant.
- Q Isn't it a fact that when you dictated your 302 Form, that
  you put in some surplusage as to what Mims told you, the
  defendant in this case?
- A I don't recall that I did.
- Q In other words, it is possible that he could have told you

"period"? And then you added "which had the bank robbery loot and the guns which were used," et ceters, because of something that you knew before you went into the room?

- A Oh, no.
- Q That is not true?
- A No.
- Q That could not have happened?
- A That could not have happened.
- Q In other words, you are saying that is his exact language?
- A I am saying that he told us the loot from the bank robbery, and the guns used in the bank robbery, were in the trunk of that '72 Camaro that his brother was driving.
- Q Did he tell you if there was anything else in the trunk of the '72 Camaro that his brother was driving?
- A I don't recall that I would have any --

THE COURT: What, in particular, do you have reference to here? You are asking about something, and I am trying to find out what you are asking about. I don't suppose you mean an automobile jack?

MR. AMOROSO: No.

THE COURT: Then why don't you tell what you mean?

MR. AMOROSO: Right, Judge. I

### apologize.

- Specifically, anything else that was used in respect to the perpetration of this crime, articles of clothing, et cetera?
- A I don't recall that he did tell us snything else.
- Q It is a fair assumption, is it not, if he did, it would have been put down in your original notes dictated, and it would be on the 302 Form, isn't that right?
- A Yes.
- Q And there is nothing indicated on the 302 Form that other than the fact that the bank robbery loot and the guns were used in the commission of the crime?
- A That is what is in the 302 Form.
- Q Right, not some of the clothing that was used in the commission of the crime. That doesn't appear in the 302.

You can take your time and refresh your recollection.

- A ("suse) No.
- Q And after he told you that, did you ask him any questions with respect to the weapons that he said were in the trunk of this Camaro?
- A No, I do not.
- And as far as you knew at that time, this was a forcible bank robbery with threats, violence, et cetera, is that correct?
- A As far as I knew, yes.

- And it would have been an important part of your case to find out from Mr. Mims whether or not he knew, No. 1, whether these guns were used in the commission of that bank robbery, and No. 2, whether or not the guns were loaded at the time, isn't that right?
- A That didn't have any interest to me except he said the guns used in the bank robbery were in the trunk of the car.
- Q Right, but you did not pursue that any further in your questioning?
- A No, I did not.
- Q That was not important to you?
- A Not at that time it wasn't.
- Q Did it become important to you?
- A No. We had the guns secured. It was not important to find out where they were. They already told us where they were.
- Q Right, but was it important to find out, Agent Green, whether or not he knew that the guns were loaded?
- A At that time, no.
- Q And it did become important to you at some other time, then, isn't that right?
- A Not to me it did not, because I was not the Case Agent.

  The Case Agent would be.
- Q And Agent Manning is the Case Agent?
- A Agent Manning is the Case Agent.

- Q Of course, even though you were not the Case Agent, you still had a responsibility to Agent Manning, as such, did you not, to get all the information you could from Mims?
- A Yes.
- Q Sure, and to tie up all the loose ends, isn't that right?
- A That is right.
- Q You then went on, and he revealed the fact that there were now some other participants, is that correct?
- A Yes, he did.
- Q With respect to the participants that he told you about at the State Police Barracks, did you conduct an investigation with respect to one James Miller, and I'm referring to a copy of your 302 Form?
- A I did not, no.
- Q Did you participate in an investigation with respect to Malachi Mima?
- A No.
- Q So in other words, you took his word for it, and as far as the FBI investigation was concerned, you did not perticipate in those investigations?

THE COURT: You knew Malachi
Mims had been arrested and taken to the
hospital, didn't you?

- A That is correct, Your Honor.
- Q But did you further follow-up the fact that Malachi Mims

was involved?

- A I did not -- other agents did.
- Q That is fine. Thank you.

At first, I believe you stated that Mr. Mims revealed to you, or rather said, another unknown individual participated who he did not reveal?

- A That is correct.
- Q Did you later receive the name of a fourth individual who was involved?
- A The next day he told us who.
- Q And that was who?
- A Eddie Lee Thomas.
- Q Right, a male black, isn't that correct?
- A Correct.
- Q Do you know what he looks like?
- A I have met Eddie Lee Thomas in the past.
- Q If you saw a picture of him, would you know him?
- A Yes, I would.
- Q I show you Defendant's Exhibit 3 in evidence and ask you if you can identify the person characterized in that photograph?
- A That is an individual I know as Eddie Lee Thomas.
- Q And do you know James Miller?
- A I hever met James Miller.
- O You never have?

- A No.
- Q And he mentioned another individual, Elmer Voight?
- A Elmer Voight, yes. This is in the second interview on July 2nd.
- Q I'm going to try to get to the point here, Agent Green, and I will probably be fluctuating, and if I am confusing you, please let me know.

Of course, you testified that Elmer Voight was a white male, is that correct?

- A That is correct.
- Q Did you participle in any investigation with respect to is incident involving Mr. Voight?
- A i did not.
- Of course, he, as far as you knew, according to Mims anyway, the defendant here, he is the men who actually drew a diagram of the bank?
- A That is what the defendant told us.
- Q Did you follow that up at all?
- A I did not, no.
- Q Did any members of the Federal Bureau of Investigation follow that up?
- A I do not know.
- Q Did Mr. Mims tell you if Elmer Voight went down to the bank itself?

THE COURT: When?

A During the second interview he told us that Elmer Voight had gone to the bank, gone inside and come out and had drawn the diagram of the inside of the bank.

THE COURT: When was that?

- A Sometime in June of 1975.
- Q And did you know that there was a Gates Police officer who had his weapon taken, and radio taken, at this bank robbery?
- A I don't recall whether I knew it at the time I talked to the defendant or not. I certainly found out afterwards or during the course of the interview.
- Q Did it ever come to your attention that the Gates Police had a report of two suspicious males outside of this bank sometime in June, prior to this incident?
- A I'm not sware of it, if they did.
- Q It never came through a report that there was a white man and black man, suspicious-looking, seated in an automobile "casing" this bank?
- A No that I know of.

MR. HOULIHAN: Your Honor, I object to the characterization of "casing the bank." There is no testimony as to that.

THE COURT: I will sustain the objection.

Q What do you call it if you are sizing it up?

A I don't know.

MR. HOULIHAN: Your Honor, may those remarks be stricken?

MR. AMOROSO: I am posing that to the agent. I just want it for my own benefit.

If two men go to a bank -- or what did Mr. Voight do in your characterization?

A The only thing I can say is what the defendant told me.

THE COURT: You are not talking about Mr. Voight. You are talking about two men that were outside the bank. There is no evidence that was Mr. Voight.

MR. AMOROSO: That is what I am trying to find out, Your Honor.

THE COURT: He wasn't there,

MR. AMOROSO: All right, Thank

you, Judge.

Q You didn't know, at any rate, one way or the other, about that situation that existed prior to --

THE COURT: About what situation?

MR. AMOROSO: About the two men

who were sitting outside of the bank.

A No.

- Q Then there came a time when the first part of the interview at the State Police Barracks was terminated, is that correct?
- A What?
- Q In other words, Mr. Mims wanted to see Agent Schaller, and you stopped talking?
- A We stopped talking about the bank robbery. We didn't stop talking.
- Q Let's confine ourselves to this bank robbery.
- A Okay.
- Q You stopped talking about this bank robbery with him until Agent Schaller arrived?
- A That is correct.
- Q Agent Scheller was in Buffale, was he, or was he in Rochester?
- A No, he was in Buffalo.
- Q So it took him how long to get down to the Police Barracks, as far as you know?
- A I have to check the log.
- Q Why don't you do that.
- A (Pause) At 12:15 p.m., July 1st, the defendant asked to talk to Agent Schaller.
- Q Why don't you just refresh your recollection as to what time Agent Schaller arrived?
- A At 1:20 Agent Schaller arrived.

THE COURT: We will take a

shert recess.

MR. AMOROSO: Thank you, Your

Honor .

(Recess from 11:20 a.m. to

11:40 a.m.)

(Jury present.)

#### CROSS EXAMINATION CONTINUED

#### BY MR. AMOROSO:

- Q Were you in the room when Agent Schaller read the Advice of Rights and gave it to the defendant to read?
- A Agent Schaller did not give him the Advice of Rights form.
  He orally advised him of his rights.
- Q Is it my understanding that after that you left?
- A Not immediately after, but shortly after, yes.
- Q Was there any conversation between Agent Schaller and the defendant Mims at that time while you were in the room there?
- A Yes, there was.
- Q Did that have something to do with this bank robbery case?
- A I remember him telling him that anything he would say to Agent Schaller would not be on a confidential basis and could be used against him in a court of law.
- Q Then you left the room, is that correct?
- A There was still a little more conversation before that.

- Q There came a time, then, when you did leave the room?
- A I did.
- Q Did you go directly back to Buffalo, New York?
- A No, I did not.
- Q Did you stay at the State Police Barracks there?
- A In that general area, yes, sir, of the State Police Barracks.
- Q Did you ever go out and look at an automobile that was apprehended with respect to this incident?
- A Yes, I did.
- Q Did you observe any contents in that automobile?
- A I did not. I didn't pay any attention. I noticed agents searching automobiles.
- Q But you yourself did not specifically pay any attention to that?
- A I did not.
- Q It is a fact when Agent Schaller came into the room, didn't Mims ask substantially that he wanted to know what charges he was being held on?
- A That is correct.
- Q And according to the 302 Form, Agent Schaller advised that the New York State Police had arrested him on traffic charges?
- A That is correct.
- Q Not bank robbery charges?

- A That is correct.
- Q Then, of course, you left the room?
- A That is correct.
- Q Did there come a time when the apparent conversation between Agent Schaller and Mr. Mims terminated that you know of?
- A Yes.
- Q Did you go back into the room where Mr. Mims was?
- A I did.
- Q After Agent Schaller finished with this apparent discussion with Mr. Mims, the defendant here, what, if anything, did you do with respect to Mr. Mims?
- A Nothing. I went back in the room, but I didn't have any more discussion about the bank robbery with him.
- Q Did you transport him to the Buffalo Office, Buffalo, New York?
- A No, I did not.
- Q Do you know who did that?
- A Agent Schaller and Agent Sculimbrene.
- Q The next day in Buffalo, New York, you and Agent Sculimbrene were called or advised to go to the United States Marshal's Office, is that correct?
- A That is correct.
- Q and there you saw Mr. Mms, the defendant?

- A In the Marshal's Office, yes.
- Q Do you know if he was wearing the same clothing at that time?
- A I can't recall.
- Q Again, did you advise him, from Government's Exhibit 37, the Advice of Rights form yourself?
- A You have to show it to me. I'm not sure which is which.

  (Government's Exhibit 37 handed

# to the witness.)

THE WITNESS: This would be the form I gave him on July 2nd.

- .Q And that was done at the vacant courtroom in Buffalo, is that correct?
- A That is correct.
- Q Then, of course, you had another conversation with Mr. Mims in the presence of Agent Sculimbrene, is that correct?
- A On July 2nd, yes.
- Q On July 2nd?
- A Yes.
- Q On that day, is it fair to say that he was a little more detailed in the information that he gave you with respect to mentioning particular names and descriptions of other persons who were involved in this crime?
- A Yes, that's correct.
- Q He also mentioned with respect to the date of June 30th

that Miller had gone into the bank that was robbed with a hat, and he had a light beard on, is that right, and dark glasses, sunglasses?

- A That is correct?
- Q Did you pursuant to your investigation follow up on that description of James Miller with respect to whether or not he did, in fact, go into that bank that day?
- A I did not follow up on it, no.
- Q Who did?
- A I would assume the Case Agent, but I don't know that.
- Q He told you the 1973 LeMans automobile was stolen either the day before or two days before the bank robbery, is that correct?
- A He told us it was transported to Rochester a day or two before the bank robbery.
- Q Can you refresh your recollection? Maybe it is the way
  I am reading your 302 Report here.

(Document handed to the witness.)

That would be on Page 43.

- A Yes, I see it.
- Q Is that something that you added in there because you knew this of your own knowledge, or is that something Mr. Mims told you?
- A He told us that the car had been transported to Rochester a day or two before the bank robbery.

THE COURT: Did he tell you the car had been stolen? That is the question.

- A Yes, he did tell us the car had been stolen.
- Q He did?
- A Yes.
- Q You, of course, had a stolen car report or a report of that automobile being stolen at some time?
- A We didn't have a report until we put the license number into the computer, and it came up, and that it had been reported stolen, to the Buffalo Police Department.
- Q Did you follow that perticular part of his statement up at all?
- A No, I did not.
- Q You never went out and looked for the particular owner of the automobile?
- A I did not.
- Q Do you know if anyone did?
- A I don't know.
- Q You never pursued the owner of that automobile with respect to whether or not Harold Mims, the defendant in that case, knew that particular person and had permission to use that automobile one time or another, did you?
- A I myself did not.
- Q Do you know yourself if anybody did?

- A I was told yes, that it was done.
- Q With respect to whether or not Harold Mims, the defendant in this case, had permission and had been in that automobile sometime prior to the date in question, do you know?
- A No, I don't know that.
- Q You don't know that?
- A No, I don't know that.
- Q Then he continued to say that he did not actively participate in this bank robbery?
- A That is correct.

# THE COURT: He said that he

# wasn't in the bank, didn't he?

- A That is correct.
- Q On the 302 report, does it not say that he did not actively participate in the planning of the robbery?
- A That is what he said.
- Q Did you believe him?
- A It was a contradictory statement.
- Q You are not answering my question. Did you believe him?
- A You are asking an opinion.
- Q Did you believe him?
- A No.
- Q Did you believe him about any part of the statement that he gave you?
- A Yes, I did.

- Q In other words, it is fair to say that you believed him when he told you what you wanted to hear and the stuff that you didn't want to hear, you didn't want to believe him?
- A No, that is not correct.
- Q Lid Mr. Mims tell you that James Miller was to drive the automobile that had apparently been stolen before, to a school yard?
- A He told us that James Miller did drive the car to the school yard.
- Q He did say that?
- A Yes.
- Q And you believed him on that, did you?
- A I don't recall whether I actually believed him at that time or not. I recorded what he told us.
- Q As one of the FBI agents who participated in the investigation of this incident, did you run down that part of the statement that Mims gave you?
- A No, I did not.
- Q In other words, with respect to the school and the so-called trial run, and the school that was 2.8 miles away from this bank, you did not personally become involved in any investigation with respect to that?
- A I did not.
- Q So in other words it could have been a lie, isn't that right?

- A I have no idea. I have no knowledge of that at all.
- Q As part of your training as an FBI agent and as part of your duties as a law enforcement officer, it is your job, is it not, or the job of the investigative agency involved in investigating a crime, to tie up what we call "all the loose ends"?
- A That is correct.
- Q Is this one of the loose ends in this case?
- A I don't know whether it is a loose end or not.

THE COURT: What is a "loose end"?

- Q Whether or not you determined there was, in fact, an automobile parked at a school and the apparent distance of that school from the bak?
- A I have no idea.
- Q With respect to the meeting at the Williamstown Apartments on July 1st, around six o'clock in the morning, did you run that lead down?
- A I did not.
- Q Do you know if any member of the Federal Bureau of Investigation did?
- A I do not know.
- Q Do you know if any member of any law enforcement agency ran that day?
- A I do not know.
- Q He told you he was supposed to get \$700 for this, or Miller

was going to pay him \$700 to drive the car?

- A That is what he told us.
- Q Of course, at no time during this interview did you ever ask him whether or not he knew the weapons that were to be used, is that correct?
- A No. I did not.
- Q Did you know that there were weapons used on July 2nd, 1975?
  THE COURT: July 1st.

MR. AMOROSO: I'm sorry -- July 1st.

- Q The weapons were used on July 1st, but subsequently to
  July 1st, and in fact, on July 2nd while you and Agent
  Sculimbrene were conducting this interview in Buffalo,
  did you know the weapons that were used in the bank robbery?
- A Did I know there were weapons used?
- Q Did you know the kind of weapons that were used?
- A I don't recall that I did, no.
- Q Did you ever ask Mr. Mims, "What kind of weapons did you fellows use in this beat robbery?"
- A I don't recall that I asked him that.
- Q That would have been an important part of this case, wouldn't it?
- A It didn't occur to me at the time to ask him the question.
- Q It didn't occur to you that in fact you, or other members of the Federal Bureau of Investigation, or other law enforcement officers, were going to eventually charge Mr.

#### John G. Green for Government, Cross.

Mims with the crime of bank robbery?

- A When I talked to him on the 2nd, he had been charged with bank robbery.
- Q He was?
- A He had already been before the U. S. Magistrate.
- Q Isn't it a fact that the charges that this defendant,
  Harold Mims, was charged with before the U. S. Magistrate
  was the charge of conspiracy only?
- A I would have to see the Complaint.

(Pause in the proceedings.)

- Q Getting back to the July 1st interview, Mims wanted to know whether he was going to be charged with bank robbery, and you or some other member of the Federal Bureau of Investigation stated that he would not be charged or taken into custody by the FBI for the bank robbery unless he attempted to escape?
- A He was told that until it had been presented to the Assistant United States Attorney for the prosecutive opinion.
- Q Did you present that to the Assistant United States Attorney in either Buffalo or Rochester?
- A I did.
- Q Which U. S. Attorney was it?
- A I first presented it to Roger Williams in Buffalo.
- Q And by works for Mr. Arcara, is that correct?

- A That is correct.
- In your questioning with respect to Mr. Mims on July 2nd, did you ever ask him what he did after he went to the bank in the morning on July 1st?
- A He told us he was just in a car out in the street outside of the bank.
- Q Did he tell you which car it was?
- A The Cadillac, as I recall.
- Q He further told you he drove by down to the school, isn't that correct?
- A That is correct.
- And that is where the people who were in the bank put all the things in the trunk of the Camaro?
- A That is correct.
- Q Again, it is very important with respect to a bank robbery that the identification of these individuals be perpetrated somehow testimonially, isn't that right?
- A "The identity of the individuals be perpetrated"?
- Q Yes. In other words, the identity of the individuals who perpetrated this crime, clothing, hats, masks, guns and on, it is important to run all those things down, isn't that correct?
- A That's correct.
- Q Isn't it also a fact that in your experience as a member of the bank robbery force of the Federal Bureau of Investi-

gation that this type of a bank robbery is one that occurs
quite often, where they have a getaway car and drop the
car and drop things in another automobile and split up,
isn't that right?

- A It happens, yes.
- Q Yes, and it happens quite a bit, doesn't it?
- A I wouldn't say it happens in the majority of the cases.
- Q But in a lot of the cases you have investigated, that has been the case, isn't that right?
- A This has happened.
- Q It is also important to find out some information with respect to whether or not a change of clother has taken place somewhere, some place, isn't that right?
- A Yes, it would be important.
- Q Did that occur to you to ask that question to Mr. Mims down at the courtroom on July 2nd when he was giving you more information as to how this bank robbery was perpetrated, whether or not a change of clothes had taken place and worn by whom?
- A I didn't ask him that question, as I recall.
- No, of course. It was not important to you, isn't that right?
- A It wasn't at that time because I had no idea what clothing was worn.
- Q Did you ever ask him, "Look, Mr. Mims. When you went to

the school, did anybody change clothes to try to secrete their identity somehow?"

- A I don't recall that I asked him that question.
- Q Did you ever ask him whether any of them put on masks, stocking-form, or any other kind?
- A I don't recall.
- Q Did you ever ask him whether or not he wore any gloves or anybody else wore any gloves?
- A I don't recall asking that question.
- Q Did you ever ask him whether or not he used a handgun, a shotgun or a rifle or anything else?
- A I didn't ask him that because he told us that he did not participate, go in the bank itself.
- Q And you believed him then, isn't that right?
- A Yes, I did believe him.

MR. AMOROSO: Would you mark this for identification?

(Defendant's Exhibit 6 marked for identification.)

- Q Calling your attention to July 2nd, 1975, I show you Defendant's Exhibit 6 marked for identification and ask you if you can identify this?
- A I have never seen this before.
- Your name appears on there, though -- not your signature but your name, isn't that right?

# John G. Green for Government, Cross.

- A My name appears on there.
- Q Whether you have seen that or not, do you know what it is
- A It is a report of proceedings before the United States
  Magistrate.
- Q In the matter of Harold Jacob Mims, is that correct?
- A That's right.
- Q As a matter of fact, is that the Magistrate's copy of that proceeding?
- A It says, "Magistrate's Copy."
- Q Does that fairly and accurately contain the initial charges that Mr. Harold Jacob Mims was charged with on July 2nd, 1975?
- A It says that the offense charges violation of Title 18, U. S. Code, Section 371, conspiracy to rob a bank.
- Q Right, and nowhere is there contained in here that he was charged with the commission of the bank robbery?
- A I don't know.
- Q Look at it.

(Defendant's Exhibit 6 handed

#### to the witness.)

- A No, it does not.
- Q So I assume, now, that you have discussed this with the Assistant United States Attorney in Buffalo before filing these, did you not?
- A Before I filed my Complaint, yes.

- Yes, and this is a fair and accurate representation characterized here of what the United States Attorney advised you to charge Mr. Mims with, isn't that right?
- A 'I would have to see the original Complaint filed. I don't even know what that is.
- Q It doesn't refresh your recollection in any way?
- A I have never seen that before. That is done by the Magistrate's Office.
- Q Of course, you were also the person who charged Malachi Mims, were you not?
- A I don't recall.

MR. AMOROSO: Would you mark this for identification?

(Defendant's Exhibit 7 marked

# for identification.)

- Q I show you Defendant's Exhibit No. 7 marked for identification and ask you if you can identify that?
- A This is a temporary report of proceedings before the United States Magistrate.
- Q In the matter of one Malachi Mims, is that correct?
- A Malachi Mims.
- Q Does that instrument indicate what Melachi Mims was charged with on July 2nd, 1975?
- A Violation of Title 18, United States Code, Sections 21, 13(a) and (d), armed robbery.

- Q And your name appears thereon, Agent Green, does it not, as the name of the complainant, and your title, "John J. Green, Special Agent, FBI"?
- A Yes, it does.
- Q Do you know how much money was taken in this bank robbery?
- A I don't recall now.

THE COURT: You wouldn't know anyway unless you had heard a report from the bank of the computation of the amount that was taken?

- A That is correct, Your Honor.
- Q Did anybody in the FBI tell you, "Hey, this is how much money that was taken"?
- A Yes, but I forgot what the amount was.
- Q Thirty thousand, twenty-nine thousand, thirty-one thousand?
- A I don't recall.

THE COURT: Who says twentynine thousand or thirty thousand?

There is an exact amount computed by the bank if that is what you want.

MR, AMOROSO: I'm sorry, Judge.

(Pause in the proceedings.)

THE COURT: It occurs in the testimony of the witness Ford, and the exact amount is \$31,507.34.

MR. AMOROSO: Thank you, Your

#### Honor .

- Q That is quite a bit of money, right?
- A Yes.
- Q And then he said that Miller superently had promised him \$700 to drive the car?
- A That is correct.
- Q That is what he told you?
- A That is what he told us.
- Q After he told you that he was supposed to get the \$700 to drive the car, did you ask him a question about what were you supposed to drive the car for?
- A Be told us that he was to drive the car because James
  Miller was not a good driver.
- Q But yet James Miller is the fellow that drove the getaway car sent from the schoolyard to the bank?
- A 's I recall, he told us that James Miller drove the getaway car from the airport parking lot to the school yard.
- Q To the school yard?
- A Yes.
- Q Who drove from the school yard to the bank, do you know?
- A I would have to refresh my memory.

MR. AMOROSO: Sure, go sieed.

(Pause in the proceedings.)

THE WITNESS: No, he did not

tell us who drove from the school yard to the bank.

- Q Did you ask him?
- A No, I did not.
- Q That wasn't important either, was it?
- A No, it was not.
- Q Let me ask you this. This bank robbery, the perpetration thereof, was sometime after nine o'clock in the morning, nine fifteen, isn't that correct?
- As I recall.

THE COURT: We know that. That is just repetition.

MR, AMOROSO: Your Honor, I'm getting at something.

THE COURT: Get at it, then, without those unnecessary questions.

- Q According to Mr. Mims, this meeting started off at the Williamstown Apartments in Cheektowags, New York, which is a suburb of Buffalo, at six o'clock in the morning?
- A That is correct.
- Q And it thok approximately how long to drive from Buffalo to Rochester?
- A An hour and a half, two hours.
- Q An hour and a half?
- A Yes.

- Q And then somebody had to be dropped off at the airport, and apparently Miller, to pick up the getaway car, isn't that right?
- A I would assume so.
- Q Then that car had to be driven down to a parking lot, isn't that right?
- A To the school yard.
- Q To the school yard?
- A To the school yard, that's right.
- Q Wherever that was.
- A That is what he told us.
- Q That automobile was the so-called getaway car that was driven from there to the bank and then from the bank back to the school yard, is that correct?
- A That is correct.
- Q Then did he tell you what happened to the getaway car after these people got together at the school yard and put things in the trunk?
- A He said that he assumed that Miller and Thomas drove off in the LeMans.
- Q Do you know of your own knowledge what happened to that LeMans?
- A Not of my own knowledge, no.

THE COURT: You knew there was an accident, didn't you?

A Not in the LeMans. I knew there was an accident with the Camero.

THE COURT: All right.

- Q Do you know of your own knowledge what occurred with respect to the LeMans automobile?
- A No, I can't, not of my own knowledge.
- Q Did somebody tell you about it?

THE COURT: As long as you pursued it, and you think it is important -you heard later that it was picked up from
the St. Mary's Hospital?

A I heard it was picked up. I don't recall where, but I heard it was found, but I don't know where.

THE COURT: That was on July 9th?

- A Yes.
- Q If you know?

THE COURT: Not if he knows, but he has heard. You asked him what he heard.

MR. AMOROSO: I apologize, Judge.

- Q It never occurred to you to "run this route," as we say?
- A Not to me, no.
- Q Did anybody do it from the Federal Bureau of Investigation, find out how long it would take to go from Williamstown

  Apartments and check these various and diverse stops out

and so on?

- A I don't know.
- Q Did you conduct a search of Mr. Mims at the Batavia State
  Police Station?
- A Did I search him?
- Q Yes.
- A I don't recall that I did.
- Q Do you know whether or not he had any money on him?
- A I don't recall whether or not he had any money on him.
- On July 2nd he mentioned that back at the school yard that Thomas, Malachi and James Miller were there when he had arrived, is that correct?

I think it is on the last page of your report, Agent.

Green.

- A (Pause) Yes.
- There is nothing indicated in there whether or not Harold
  Mims got out of his automobile and went over there and
  helped these individuals do whatever they had to do?
  Did you ask him that question on July 2nd?
- A The only thing that I recall that he told us about was that the loot from the bank robbery, and the guns, were put in the Camaro.
- Q But he never got out of his automobile?
- A I don't recall that he said he did.
- Q Of course, that was not important to you to ask him that

# John G. Green for Government, Cross.

mestion?

- " to, ic was not.
- Q By the way, did you conduct the questioning, or was this just a spontaneous outburst by Mr. Mims on either one of these days?
- A A little bit of both.
- Q In other words, you asked him some questions, and he gave you answers?
- A Some questions.
- Then he filled in, and what he didn't tell you, you asked, is that right?

THE COURT: What is that?

- Q What he didn't tell you, you asked about?
- A I don't recall recall how it went. I asked for names. I did that.
- Q I understand that, but this was a very important case, was it not?

THE COURT: Of course, it was.

#### That is repetition.

- Q All right. You didn't feel that asking him about whether or not he got out of the car at the school yard was important?
- A No, I did not.
- Q Carticularly, in view of the fact that you charged him

A He didn't charge him.

MR. AMOROSO: I'm sorry -according to the Exhibit, he was charged
with conspiracy on the advice of the United
States Attorney in Buffalo.

THE WITNESS: As I recall, yes.

- Q And as a special agent of the Federal Bureau of Investigation, you do not have at your disposal a court reporter or a stenographer to take down statements, do you?
- A Are you talking about on the 2nd or the 1st?
- Q On the 2nd -- let's go to the 2nd.
- A No, I did not have a stenographer present.
- Q You didn't have a secretary to take Mr. Mims' testimony down in a shorthand book?

THE COURT: This is in Batavia?

A No, on the 2nd we were in the courtroom on the 7th floor.

THE COURT: You are talking about

the 2nd, now, not the 1st?

MR. AMOROSO: That's correct.

THE WITNESS: No. We were in

this building, and our stenographers were

over in the other building.

Q On this important case, it did not occur to you that it might be helpful to get a stenographic statement with respect to this statement that Mr. Mims gave?

- A I didn't take the stenographer with me.
- Q You didn't call her either?
- A No, I did not.
- Q You didn't have anyone like Mr. Jacobson here (indicating), with a stenographic machine either?
- A I did not.
- Q of course, that is not available to the Federal Bureau of Investigation on serious bank robbery cases?
- A Every bank robbery is a serious case, and I very seldc take signed statements.
- Q Of course, that makes it right, because you never do it?
  You never did it in this case, but it doesn't make it
  right?

MR. HOULIHAN: I object, Your
Honor. It doesn't make it wrong, either.
THE COURT: I will sustain the objection.

MR. AMOROSO: Thank you very much, Agent Green.

## REDIRECT EXAMINATION

#### BY MR. HOULIHAN:

- nesses and subjects?
- Me first thing, of course, you advise them of your identity and then advise them of their rights that they

## John G. Green for Government, Redirect.

# have to remain silent.

- Q Then when you are interviewing them, do you take notes?
- A Yes. In this particular case, there were two agents, and one of the agents took notes, yes.
- Q Then what do you do with the notes?
- A You use the notes for your dictation to the stenographer, the FBI stenographer.
- Q Then they are typed up?
- A Then they are typed up.
- Q Then what happens to the typed copy?
- A It becomes a matter of the file, a record in the file.
- Q Is it given back to the agent?
- A It is given back to the agents who participated in the interview for their proofreading to make sure everything in there is correct, and then the agent initials are placed on there to show that he read it and that it is correct.
- Q Since you have a permanent record, what do you do with your notes?
- A They re destroyed.
- Q Is that normal, regular, everyday FBI procedure?
- A It is normal, everyday FBI procedure.
- Q How long have you been with the FBI?
- A Thirteen years.
- Q And has it been done all that time?

A It has.

# MR. HOULIHAN: Would you mark

#### this for identification?

(Government's Exhibits 39 and 40

# marked for identification.)

- Q I show you Government's Exhibit 39 marked for identification, and would you tell us what that is?
- A This is the FD-302, which was dictated to a stenographer on July 1st, 1975, from which the notes taken during the course of the interview were used in order to dictate this.
- Q Was that proofread?
- A Yes, it was.
- Q Do your initials appear on there?
- A My initials appear on there.
- Q And that is the "G"?
- A That is the "G."
- Q And do Special Agent Sculimbrene's initials appear there?
- A Yes. There are initials for Dennis Sculimbrene.
- Q Now about Special Agent Schaller?
- A And for Special Agent Richard Schaller.
- Q Then was that interview taken?
- A On July 1st.
- Q When was the 302 dictated?
- A July lat.

- Q When was it transcribed?
- A July lat.
- Q All the same day?
- A Yes, it was.
- Q Referring now to Government's Exhibit 40 marked for identification, can you tell me what that is?
- A That is the 302 representing the interview on July 2nd, 1975, with the defendant.
- Q And do your initials appear on there?
- A It does.
- Q And are there initials for Dennis Sculimbrene on there?
- A There are.
- Q When was that interview?
- A July 2nd, 1975.
- Q When was it dictated?
- A July 2nd, 1975.
- Q When was it transcribed?
- A July 2nd, 1975.

MR. HOULIHAN: Would you mark

this for identification?

(Government's Exhibit 41 marked

# for identification.)

- Q Special Agent Green, I show you Government's Exhibit 41 marked for identification. Can you tell me what that is?
- A This is an affidavit and a complaint filed by me against

Harold Jacob Mins.

- Q And that is a copy of it, isn't it?
- A Yes.
- Q And what was the purpose of filing that Complaint?
- A To charge Jacob Mims with conspiracy to rob a bank.
- Q So you could hold him, is that right?
- A So we could hold him, yes.
- On the day that you signed the affidavit that accompanies that Complaint, was all the evidence gathered in this case?
- A No, it was not, not to my knowledge, it wasn't.
- Q That affidavit was done solely for the purpose of holding him until the Grand Jury could meet, is that right?
- A That is correct, yes.
- Q Did you make any promises to Harold Mims that he would only be charged with conspiracy?
- A I did not.
- Q Did anyone make any promises that he would be only charged with conspiracy in your presence?
- A Vo.
- Q Would you explain to the jury what the duties are of a Case Agent?
- The Case Agent is responsible to see that all phases of the investigation are handled and completed. He will either do it himself or have it done by another agent.
- Q Of your own knowledge, how many FBT agents worked on

# John G. Green for Government, Redirect.

#### this case?

- A I would say approximately twenty-five to twenty-seven.
- Q Of your knowledge, do you know whether there were any other law enforcement agencies involved?
- A Yes. The New York State Police were involved; the Gates
  New York, Police Department was involved, and the Genesee
  County Sheriff's Office was involved that I know of.
- Q noes the fact that an FBI agent is named Case Agent, does that mean that he checks everything himself personally?
- A No, it does not.
- Q Does that mean that he interviewed each witness?
- A No, it does not. In fact, it would be very unlikely if he did.
- Q He would usually assign other people to do that, is that right?
- A That's right.
- Q In your conversation with Jacob Mims on July 1st, 1975, at Batavia, was the name Elmer Voight mentioned to you?
- A Not as I recall.
- Q Did you refrest your recollection from your 302?
- A Yes.
- Q Does that say anything that would refresh your recollection whether it was mentioned at all?
- A No.
- Q no you put your own thoughts in the 302?

MR. AMOROSO: Objection.

THE COURT: Read the question

back.

(Last question read.)

MR. AMOROSO: I object.

THE COURT: I will sustain the

## objection.

- Q What information goes in the 302?
- A You put the information in the 302 as the information you obtained during the course of the interview.
- Q From the person you are interviewing?
- A From the person you are interviewing.
- Q Is that what you did in this case?
- A That is what I did.
- Q What if the person you are interviewing tells you something different than you know, in fact, is true?
- A You would still put it in the 302.
- Q Just as he told it?
- A Just as he told it.
- Q Mr. Amoroso asked you whether Harold Mims was told that he was charged with speeding?
- A Yes.
- Q And do you recall what that conversation was?
- A I recall the conversation that the defendant asked Special Agent Schaller and myself what he was charged

with, and he was told at that point that he was charged with speeding by the New York State Police, that he had not been charged by the FBI for bank robbery, and at this point he said, "Well, I have already made enough admissions to be charged with bank robbery," and he was told that the case would have to be presented to the Assistant United States Attorney.

- Q Before he could be charged?
- A Before he could be charged.

MR. HOULIHAN: I have no further

questions.

#### RECROSS EXAMINATION

#### BY MR. AMOROSO:

- Q Mr. Houlihan says, or you did, that whatever goes on in the interview, whatever is said is put down in your notes and dictated and then put in the 302 form, is that right?
- A That is correct.
- Q With respect to what Mr. Mims was to be charged with, where does it appear in the part of the 302 Form with respect to the conversation you had with Mr. Mims at the Barracks in Batavia that he said he had already made enough admissions to be charged?
- He was advised that he had not been charged by the Federal Bureau of Investigation with the bank robbery which occurred that morning. Mims stated that he had already made

\* \* \* \* \*

A The .32 caliber revolver is a dangerous weapon. This particular weapon at the current time is malfunctioning.

It has been that way -- it has been the same when it came in the care and custody of the FBI. I feel the weapon has been safeguarded as far as evidence. I don't know what the condition of the weapon was when it was received. I assume it was the same.

much. I have no further questions.

MR. HOULIHAN: No further

questions.

(Witness excused.)

MR. HOULTHAN: I call Richard

Schaller.

RICHARD F. SCHALLER,

called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY IN. HOULTHAN:

- Q Mr. Schaller, by whom are you employed?
- A I am employed by the State of New York, by the Office of Special Investigator of Nursing Homes, Associate Services and Health.
- o low long have you worked for them?
- A Shout five months.

- Q And prior to that time, what was your employment?
- A I was employed by the FBI.
- Q How long did you work for the FBI?
- A Twenty-five years.
- Q In what capacity?
- A Special Agent.
- Q In July of 1975 were you assigned to the Buffalo Office?
- A Yes, I was.
- Q In the course of your duties as a Special Agent, did there come a time that you went to Baravia, New York, to interview Harold Jacob Mims?
- A Yes, sir.
- Q And when was that?
- A On July 1st, 1975.
- Q And where did you interview him?
- A I interviewed him in the second floor office of the State
  Police Barracks in Batavia.
- Q Was he alone when you interviewed him?
- A Part of the time he was, and part of the rime he was not.
- Q What, if anything, did you say to him when you first came into that room?
- A When I first came in the room, I said, "Hello" to him.

  I had known Jake Mims. I told nim --

MR. AMOROSO: I object to that,

Your Honor .

THE COURT: What is that?

MR. AMOROSO: I object to that and ask that it be stricken.

THE COURT: Objection is over-ruled.

THE WITNESS: I told him that I understood that he had asked to see me, and I was up here to talk to him. I told him that any prior agreements that we had regarding his furnishing information --

MR. AMOROSO: I object to that, Your Honor.

THE COURT: Objection is over-

MR. AMOROSO: It is highly prejudicial. I move for a mistrial.

THE COURT: Go shead.

THE WITNESS: I told him that
any prior agreements that he had with me
concerning the furnishing to me of information on a confider all basis was no
longer in effect.

trial, Your Honor.

THE COURT: Motion is denied.

THE WITNESS: I told him that some time ago that we had an agreement -MR. AMOROSO: I move for a mistrial.

THE COURT: Motion is denied.

I denied the same motion in less than half
a minute ago.

THE WITNESS: -- that any information he furnished to n on a confidential basis I would not use against him in a court of law, nor would I use any information that he had given me to develop other evidence against him about violations of law. I told him that those agreements were no longer in effect, that anything he said to me would be used against him in a court of law. I wanted to tell him his rights. I asked him if he had been advised of his rights by the other agents who were then present with me, Mr. Green and Mr. Sculimbrene. He said that he had been advised of his rights. I said, "I'm going to tell you again. You are entitled to an attorney. Anything you say can be used against you in court. You can have

an attorney present with you, or you can waive the appearance of an attorney with you."

THE COURT: Did you tell him he had a right to remain silent?

- Yes, Your Honor, I did. I told him if he could not afford an attorney that one would be provided for him. I told him if he decided to waive his rights and answer questions that he could stop answering at any time. He said that he wanted to talk to me and would waive his rights. Then he asked me on what charges he was being held. I told him he was being held by the State Police on traffic charges. He said he had already told Mr. Green and Mr. Sculimbrene about the bank robbery that morning, and he told them enough that he could be arrested on Federal charges. I told him that all the facts were not gathered together, and the United States Attorney's Office had not had an opportunity to make a decision about that matter yet, so he was not in Federal custody, but that if he attempted to leave, or escape from that room, that I would arrest him.
- Q What happened after that?
- A At this time he asked me if he could talk to me in privacy, just the two of us, because Mr. Green and Mr. Sculimbrene were there at that time.

- Q Special Agent Schaller, I show you Government's Exhibit 36 marked for identification. Do you know what that is?
- A Yes, sir.
- Q What is it?
- A It is an interview log that was prepared listing times and sequence of events of the interview of Mr. Mims.
- Q On what day?
- A July 1st, 1975.
- Q And referring to the last page of that Exhibit, there is a signature on there, and whose signature is that?
- A It is my signature.

MR. HOULIHAN: I offer G-36.

MR. AMOROSO: Your Honor, may

I have a moment to read this?

THE COURT: Yes.

(Pause in the proceedings.)

MR. AMOROSO: Your Honor, may I

have a few preliminary questions?

(Pause in the proceedings.)

### VOIR DIRE EXAMINATION

# BY MR. AMOROSO:

- Q Did you write these notations on these pieces of paper?
- A It is not in my handwriting.
- Q Do you know who did?
- A Yes, sir.

4121

- O Who was that?
- A Mr. Sculimbrene.
- Q And were you there when he made the apparent notations on here?
- A Yes, sir, I was.
- Q Apparently, then, you got there after they did originally, did you not?
- A Yes, sir.
- Q If my recollection is correct, you were called from Buffalo at the behest of the defendant?
- A Yes, sir.
- Q And you arrived there sometime after Green and Sculimbrene, did you not?
- A Yes, sir, I did.
- O So is it fair to say, then, that Agent Sculimbrene made out part of these notes in your absence?
- 1. No.
- Q That time did you say you arrived there?
- A I didn't.

1 ........

- Q What time did you arrive?
- Q of course, the first notation " " into of paper is "11:43 a.m.," isn't that right?
- A Yes, sir.
- C So is it your testimony that Agent Sculimbrene then made

out this form starting with 11:43 sometime after you arrived?

- A Yes, sir. I would be happy to explain that if you like.
- Q Well, I will get to that in a minute.

At 3:02 in the afternoon originally, there was a name that appeared, the Assistant United States Attorney that was notified, and that is scratched off, is it not?

- A Yes.
- Q And that was Mr. Roger Williams from Buffalo?
- A Yes, sir. I scratched it out. Mr. Larimer's name is on there, I guess.
- Q From Rochester?
- A Yes.
- Q He used to work with Mr. Houlihan?
- A I have no idea.
- Q You made that change when?
- A I made that change after Mr. Sculimbrene wrote it down.
- Q Because apparently, he didn't talk to the Assistant United States Attorney, Mr. Williams, is that correct?
- A That is Mr. Williams, the Assistant United States Attorney in Buffalo. At that time we were having conversations with Mr. Williams in Buffalo. Mr. Sculimbrene had it written down on the log that we talked with Mr. Williams about authorizing presecution. As it turned out he conversations I had were with Mr. Larimer -- is the his

# Richard F. Schaller for Government, Direct.

name?

- Q Yes, sir.
- A Yes.
- Q Is it fair to say, then, that this log is not, in fact, part of the original notes of this case?
- A Yes, sir.
- Agent Schaller, would you look at this again, and are these your initials that appear on the margin of some of the pages?
- A Yes, sir, those are my initials that appear next to some of the entries.
- Q Is that because you were personally there when they occurred?
- A Yes, sir.

MR. AMOROSO: No objection.

(Government's Exhibit 36 marked

### in evidence.)

### DIRECT EXAMINATION CONTINUED

# BY ME. HOULTHAN

- Q Special Agent Schaller, what happened next after you advised him what he was charged with and that you hadn't talked to the United States Attorney yet?
- A To asked that Mr. Sculimbrene and Mr. Creen leave the room which they did. And after Mr. Sculimbrene and Mr. Green left the room, Mr. Hims told me that he had assisted in the planning of the robbery of the bank in Rochester which

had occurred that morning. He said that he, himself, could not go in the bank because his face might be recognized. He said that his brother, Malachi Mims, James Miller and two other individuals had planned the bank robbery with him. I asked him who the other two individuals were, and he would not say. He said that he expected to get part of the bank loot from the robbery. I asked him about the robbery and how it was committed --

- Q Excuse me, but did he say for what reason he was going to get part of the bank robbery loot?
- A He told me that he had assisted in the planning of the robbery, and he was to receive part of it.
- Q I show you Government's Exhibit 39 marked for identification and call your attention to Page 2 of that Exhibit and ask you to read the paragraph next to the last paragraph, from the bottom.
- A (Witness complies.)
- Q Does that refresh your recollection as to why he was to receive part of the bank robbery loot?
- A Yes.
- Q What, if anything, did he tell you?

  Le said that he was to receive part of the bank robbery loot for his assistance in planning the robbery.
- Q What happened next?
- A I asked him about the robbery, and he said that on Sunday

night, which was on June 29, 1975, a stolen automobile which was later to be used as the getaway car in the robbery, was taken from Buffalo to the Rochester airport.

MR. AMOROSO: I'm going to object now. This former agent is now reading from the 302.

THE COURT: Obejetion is overruled.

MR. AMOROSO: May I have an ex-

ception, Your Honor?

THE COURT: Yes.

THE WITNESS: I am not reading from it, Your Honor. I happen to be looking at notes, but I am not reading from it.

THE COURT: And, moreover, the notes are in evidence.

MR. AMOROSO: No, they are not, Your Honor. I'm sorry, but they are not.

THE COURT: What?

MR. AMOROSO: The 302 is not in evidence, Your Honor.

MR. HOULIHAN: I think it is just a log, Your Honor.

MR. AMOROSO: The log is in evidence but not the 302.

THE COURT: What do you have in

front of you that you are residing from?

I have the interview report, the FD302.

THE COURT: It has got an Exhibit number?

A G-39.

THE COURT: All right.

THE WITNESS: He said that the stolen automobile was driven from Buffalo and was parked at the Rochester airport. He said that on the morning of the robbery, which was Tuesday morning, he drove an automobile, which was owned by James Miller, but was really in James Miller's brother name. I would like to refer to my notes for his name.

His name is Angelo Miller.

That he drove to Rochester with James Miller and another individual. I asked him who it was, and he would not say. He said that his brother, Malachi Mims, drove to Rochester in another car. I refer to my notes -- it is a 19/2 blue Camero, and they all drove to Rochester. I asked him about the other individual who went to Rochester with him, and he

wouldn't say who he was or how he got there. At Rochester he said that someone picked up the stolen automobile, which had been parked at the Rochester sirport. Again, I asked him who picked up that automobile, and he would not say.

He said that James Miller,
Malachi Mims and the other individual,
who he refused to identify, drove to the
bank and went in the bank that morning
and robbed the bank.

He said that he himself, was waiting outside the bank and we watching the robbery. He said that he saw a police officer go into the bank during the robbery, and he left immediately.

I asked him where the other man was, the fourth man who he mentioned, and he would not say who that man was, nor would he say what that man was doing at the bank.

police officer go in that he drove to a school parking lot. And afterwards he met James Miller, Malachi Mims, and the

bank. He said that he had changed clothing and put in part of their clothing that they had been wearing during the robbery in the trunk of the automobile driven by Malachi Mims, which he said was the blue Camaro.

He said they put the money in the trunk of the car, and they put some of their guns in the trunk of the car.

He said that he and his brother then drove together from Rochester until they were spotted by the State Police.

I asked him how the others

drove back, and he would not tell me how
they got back to Buffalo. He then said
he was arrested by the State Police somewhere in the vicinity of Fatavia.

After he said this, he said he realized he might get some time, that he might have to serve a sentence because of his participation in this robbery.

And he said he hoped that if he cooperated with the Federal authorities and he testified, that he might get a light sentence.

MR. AMOROSO: I object to that and move for a mistrial.

THE COURT: The objection is overruled. Motion denied.

THE WITNESS: And he also said that he hoped if he cooperated and testified that he might be able to be released on bond. I told him that it was up to the United States Attorney to decide whether or not he is going to be prosecuted, and it was up to the Magistrate to decide the amount of the bond to be set, and there was nothing I could do about that except --

- Q You didn't make him any promises?
- A Yes, sir, I did. I told him I would bring his cooperation to the attention of the United States Attorney.
- Q And did you do that?
- A Yes, sir, I did. And after that he asked that I again call his attorney, Mr. Dobozin.

THE COURT: who?

A Mr. Dobozin. I think it is Ralph Dobozin, and which I did, and I attempted to call Mr. Dobozin.

THE COURT: Is that a Buffalo

lawyer?

- A Yes, Your Honor, it is. Mr. Dobozin was not in when I first called, and a few minutes afterwards I received a call from Mr. Dobozin. I told Mr. Dobozin that Mr. Mims was in custody of the State Police, that there was a bank robbery in Rochester. And he wanted to talk to his client, and he did talk to his client on the telephone. I talked to him again, and he said he did not want Mr. Mims to answer any further questions.
- Q Did you stop the interview at that point?
- A Yes, sir.
- Q What, if anything, did you do after that?
- A I did a number of things, I suppose, but I was out of the room most of the time after that discussing matters with the United States Attorney, or the Assistant United States Attorney --

THE COURT: Mr. Larimer?

- A Yes, Mr. Larimer.
- Q Mr. Larimer?
- A Yes, sir, Mr. Larimer, and with other agents of the FBI who were on the premises of the State Police Barracks.
- Q T call your attention to Covernment's Pxhibit 36 in evidence and refer to the third page of that Exhibit, and can you tell from that log what time you had your conversations with Mr. Larimer?

A The first entry I see here is 3:02 p.m. Let me look before that.

(Pause in the proceedings.)

THE WITNESS: At 3:02 p.m. I

### talked to Mr. Larimer.

- Q And subsequent to your conversation with Mr. Larimer, did you have a conversation with Mr. Mims again?
- A Yes, I did. I told him at 3:05 p.m. that he was under arrest by the FBI for bank robbery.
- Q Did you ask him any questions after that?
- A No, sir.
- Q Was Mr. Mims then transported to Buffalo?
- A Yes, sir, he was.
- Q And who was with him when he was transported?
- A Mr. Sculimbrene and I were both with him.
- Q And who was driving the car?
- A Mr. Sculimbrene was driving the car, and I was sitting in the back seat with Mr. Mims.
- ( What, if anything, were you doing at that time?
- A I was just a passenger in the automobile
- Q Did there come a time that Mr. Mims said anything to you?
- A Yes. On the way back Mr. Mims said that he would be willing to plead guilty to a conspiracy charge for the bank robbery which occurred that morning, and he would testify for the Covernment as a witness, and he hoped that if he did that,

that the sentence he might receive would be would be and that he would be released on bond. And I told him that I could make him no promises at all as to whether or not he could plead to a conspiracy charge and that was up to the United States Attorney's Office to decide whether or not he would plead guilty to a comspiracy charge or whether or not ne would be charged with conspiracy or charged with bank robbery itself. I said that was up to the United States Attorney's Office to decide what they were going to charge him with. I told him it was up to the Magistrate to decide what the amount of bond was to be. I told him in view of the aggravated circumstances of the bank robbery this morning, the fact that the police officer had his gun taken away from him, that it was unlikely, in my opinion, that the bond would be a low amount of bond, that it would probably to a high amount of bond.

- When he said this to you in the car, was that in response to a question that you asked nim?
- A No, sir, it was not.
- Q He volunteered it?
- A Yes, he did.
- Q Just for the purposes of the record, do you see the person that you spoke with on that day in the courtroom?
- A Yes, I do.

- Q Where is he seated?
- A He is sitting at a table in kind of an orange jacket.

MR. HOULIFAN: Let the record show he is identifying the defendant.

I have no further questions.

#### CROSS EXAMINATION

BY MR. AMOROSO:

- Q Agent Schaller, did you talk to Agent Green about this case before coming in court this afternoon?
- A We probably had some conversations yesterday, yes.
- Q Isn't it a fact that you talked to him right after the court recessed this morning, right here in the courtroom in front of Mr. Houlihan's table?
- A I probably did talk to him, yes.
- Q Did you discuss what his testimony was at that time?
- A There is only one thing that he mentioned to me at that time --
- Can you answer my question "yes" or "no"?
- A Yes, sir.

answer "yes" or "no." That is the way he would like to have you answer

THE UITNESS: I know, Your Honor.
Did be discuss his testimony?
Yes, sir, he did, one point of his testi-

### mony.

- Agent Schaller, prior to the interview of Mr. Mims at the State Police Headquarters in Batavia on July 1st, 1975, did you know anything about this case at all?
- A Before I arrived?
- Q Yes.

9

Well, yes, I knew there was a problem. I heard the report of a bank robbery on the radio in the automobile that I was driving. I may have had some other information about it, and in fact, I had spoken to Mr. Mims on the telephone, you know, for just a few minutes, when I found out he wanted to talk to me. I just called him up and said, "Yes, please come up and see me."

I don't think I knew anything else,

- You didn't know anything about whether or not any weapons were used, whether or not there was a description of the automobiles used and whether or not there was a description of the clothing worn by these people who committed these crimes?
- A You are asking me about four questions. I would be happy to answer one of them at a time.
- Q Go & ead.
- A I heard the communications over the radio about automobiles which the State Police or the FBT would be on the lookout for. I don't recall now whether or not I heard a clothing

- description. However, I would believe I probably did because that is the usual practice after a bank robbery.
- When you arrived at the State Police Meadquarters, I assume you checked in at the desk to let them know what your identification was and then went up to the room, is that correct?
- A Yes.
- Q Did you have an opportunity to see any vehicles that were there which were apprehended as a result of any chase that may have been involved with respect to this bank robbery?
- A No, sir.
- Q Did you happen to see that at any time with respect to this incident?
- A No sir.
- Q Now you have the 302 report of this incident in front of you, do you not, sir?
- A Yes, sir.
- Q I have Page 6 on the one I have (indicating). Do you have a similar page?
- A No. sir.
- Well, it would be the second page, then, and perhaps it might be the other report where, I believe, it is indicated that Mims then requested that he speak to Special Agent Schaller alone?
- A Yes, sir.

- Q Do you see that part?
- A Yes, sir.
- Q At that point, of course, you had already advised him of his Constitutional rights and you did that orally, did you not?
- A Yes, sir.
- Q And you had advised him that, of course, he was being held by the State Police on traffic charges, isn't that right?
- A Yes, sir.
- Q Of course, it is not your recollection that he was being bold on bank sobbery charges at that time, is it?
- A No, sir.
- Q Do you know whether or not at the particular time you were talking to him that he knew he was being charged with bank robbery?
- A I don't know what he knew. He asked me on the charges which he was being held, and I told him it was traffic charges, and then he told me that he had already told Mr. Green and Mr. Sculimbrene enough details of the bank robbery that he expected to be charged with bank robbery by the Federal authorities.
- Q Isn't it a fact he really said that he had made admissions to Special Agents Green and Sculimbrene, isn't that what he said?
- A Those were my words.

- Q In other words, the 302 Form really is not a true and precise dictation of the notes that you took and that, I assume, you destroyed, is that right?
- A You are asking me two questions again.
- Q If you can, will you answer them.
- A It is not a transcript.
- Q It is not?
- A It is not a transcript.
- Q What is it?
- A It is not a verbatim transcript of the conversation. It is a summary of the agent's recommendation of what was said or what was done at the time.
- Q In other words, then, it is fair to say that you may have forgotten to put something on the 302 Form, isn't that right?
- A That is always possible.
- Q And it is possible that you may have stated here on direct examination something that does not appear on the 302 Form?

MR. ROULIHAN: Your Honor, I object to what is possible.

THE COURT: I will sustain the objection.

Q Did you tell Mr. Houlihan on direct examination that Mr.
Mims had said to you that he assisted in planning this
robbery and that he couldn't go into the bank because he

was afraid that they would recognize his face?

- A Yes, sir, I did say that, and that is not in the interview report.
- Q Is there a reason for that?
- A Yes, sir, because I recall it now, and I apparently did not write it down.
- Q In any bank robbery, in your experience, the identification aspect of the case is very important, isn't that correct?
- A That is one of the things that is important, yes.
- Q Do you remember what Mims was wearing at the time you talked to him?
- A I have no idea.
- Q Did somebody take the clothing from him at some time after the arrest and transported the clothing to Buffalo?
- A I really don't know. I think I heard at a later date that happened, and I was not there, and I really do not know.
- I show you Defendant's Exhibit No. 5, a package containing a shirt and a pair of trousers and a pair of shoes. Can you identify those objects?
- A No, sir, I cannot.
- Q You can't?
- A No. sir, I cannot.
- Q Of course, when you make a description, it is not part of your duties to take down what clothing the suspect is

wearing at the time you interview him, or make the arrest?

- A No, sir, I really don't think so. This is a description that is prepared so that we will have a future identification of him, and clothing, you know, can be put on and taken off.
- Q But at the time of the arrest in a bank robbery case, you wouldn't say that would be very important?
- A I think it would be very important if the interviewer at the time thought that the person being interviewed was wearing the clothes used in the bank robbery.
- Q There came a time during the interview, did there not, that Mr. Mims stated to you that several members of the people who went down to the bank, several of those members changed clothing or took some clothing off, isn't that right?
- A He said that the clethes worn in the bank robbery were put in the trunk of the car.
- All of the clothes?
- A No. I said some of the clothes worn during the bank robbery were put in the trunk of the car. I don't know who was wearing the clothes or what people they were taken off of.
- In your expertise as an FBI agent, that would be a very important part of the case, wouldn't it, with respect to identification?
- A I would like to enswer your question, but I am not exactly

the clothes worn in the bank robbery and I were interviewing him, yes, sir, that's right.

- Q Of course, you weren't just investigating this case just with respect to Mr. Mims, were you?
- A Are you talking to me?
- Q Yes.
- A That was my only purpose to interview Mr. Mims. I was not involved in the other phase of the investigation.
- Q You didn't have anything to do with the other three or four individuals who were allegedly involved in this thing, as far as follow-up?
- A Right.
- Q You have taken statements from people before, have you not?
- A Yes, sir.
- Q Defendants?
- A Yes, sir.
- Q Have you ever followed up a story that a defendant has given you, to tie up the loose ends, so to speak?
- A Certainly.
- Q And you were told by Mr. Mims that one of the automobiles was driven from the parking lot of the Rochester airport, is that correct?
- A Yes, sir.
- Q And did he tell you where that automobile was driven?

- A He said that automobile at the Rochester airport was driven to the bank and was used as the getaway car from the bank.
- Q It was driven right to the bank, in other words?
- A Yes, sir, and I think he cold me, and I don't think I testified to it, that that automobile was a Pontisc LeMans.
- Q Did you back-track that statement of his and check it out with anybody at all to see whether or not that could be verified?
- A Personally, I was not assigned any further part of this investigation.
- Q I assume, then, you mean you did not pursue any investigation with respect to either James Miller or Angelo Miller or any other person that was named by Mr. Nims?
- A No, sir, I did not.
- Q Do you know if anybody did?
- A I have no personal knowledge of that.
- Q Only "helter skelter," through the Bureau, hearsay, isn't that correct?

MR. HOULIHAN: I object to the characterization.

MR. AMOROSO: I withdraw it.

- Q In other words, only by talking to other agents and so on?
- A Yes, sir. I talked to other agents that were involved in the bank and the investigation, but I was not involved myself in any further part of the investigation.

- Q Did you talk to Agent Green sometime after July 2nd with respect to this case?
- A Certainly, yes. Recently, I have.
- Q Well, say within a day or so, or even on July 2nd, 1975, were you advised by Agent Green at all that Mr. Mims had made another statement in Buffalo, New York?
- A I think Mr. Green told me he had seen Mr. Mims, but I really don't have any idea what Mr. Mims may have told him.
- But, of course, you were assigned to Mr. Mims, were you not?
- A I really don't know that you mean by "assigned" to him.

  He asked to see me, and I saw him.
- Q But you used that characterization a few minutes ago that you were only assigned to Mr. Mims in no other part of this investigation?
- A That's correct. I was supposed to see Mr. Mims on that day, whatever day it was, and at the time I knew I had another commitment, and Mr. Green met with him.
- Q On July 2nd, 1975?
- A Whatever day it was.
- Q It was the day after the bank robbery?
- A It would have been that day or the next day. I really don't remember.
- Q And you knew that Agent Green and Agent Sculimbrene did

talk to him in Buffalo?

- A Yes. Mr. Green told me they did.
- And you, of course, did not ask Mr. Green with respect to any particulars of the statement that he made?
- A I may well have.
- Q Do you remember Agent Green telling you that Mr. Mims had said that the getaway automobile, or the Pontiac LeMans, was an automobile that was placed in a parking lot of the school?
- A I personally have no recollection of what Mr. Green may have told me that Mr. Mims said.
- Q Do you know what Mr. Mims was charged with in Buffalo by Agent Green et all?
- A I knew at the time. I think it was conspiracy, but I'm not certain.
- Q Right, but in Batavia you placed him under arrest for bank robbery, isn't that correct?
- A Yes, sir.
- Q Is there any particular reason why you didn't file those papers with the Magistrate in Buffalo?
- A I was told at the time I was authorized and a warrant was going to be authorized to charge him with bank robbery, so I therefore told him that he was arrested for bank robbery.
- Q You did talk to Agent Green after your interview with Mr.

Mims at the Police Bar scks, did you not?

- A Yes. I talked with Mr. Green and I also talked with the United States Attorney in Buffalo who at that time was handling some of the matters in this case.
- Q The same person whose name is crossed out on the Interview Log?
- A Yes, sir, Mr. Williams.
- Q But he crossed his name out and then put Mr. Larimer's name in, right?
- A Yes, sir.
- Q Did the United States Attorney authorize you to make an arrest for bank robbery in this case?
- A Yes, sir.
- Q And dir you tell Agent Green to do that?
- A I told Mr. Mims myself that he was under arrest for bank robbery.
- Q Did you tell Agent Green to file bank robbery charges against Mr. Mims in Buffalo?
- A No, sir. I'm not authorized to do that. It is only the United States Attorney's Office that is authorized to do that.

MR, AMOROSO: May I have a moment,

please, Your Honor?

(Pause in the proceedings.)

Q I have just a few more questions, Agent Schaller.

This conversation was not recorded by you, was it, on paper, other than taking notes?

THE COURT: You mean there was no stenographer there?

MR. AMOROSO: Yes.

THE COURT: And no recording

### device?

- A No, Your Honor.
- Q Of course, you do have such facilities available to you, being an agent in the Federal Bureau of Investigation, do you not? You have a stenographer to come in and take statements from a defendant in shorthand or by machine?
- A It could be, I suppose.
- Q And I understand that was not done in this case?
- A No, sir, it was not.
- And did you ever follow up this investigation with respect to the Pontiac LeMans? I don't know if I asked you that question, and I apologize if I am being repetitious.
- A I did not.
- Q Did he tell you, or did you ask him who came from Buffalo with him in this automobile to Rochester?
- A Yes. He told me James Miller and one other individual, but he would not tell me who that individual was.
- Q And Halachi Mims drove another automobile, is that correct?
- A Yes, sir.

- Q This conversation that you had with Mr. Mims, was that in question and answer form, or was it what you would call a narrative, do you remember?
- A It was a discussion. I'm certain I asked him questions, and we had a discussion.

MR. AMOROSO: Thank you very much,

Agent Schaller.

#### REDIRECT EXAMINATION

# BY MR. HOULTHAN:

- Q Special Agent Schaller, was the interview with Mr. Mims conducted in accordance with FBI procedures?
- A Yes, sir.
- Q The 302 that was prepared in connection with this case, was that prepared in accordance with FBI procedures?
- A Yes, sir.
- Q And the date that that 302 was dictated and transcribed, when was that?
- A The date of dictation is listed as July 1 and the date of transcription is listed as July 1.
- Q And that was the same date of the interview?
- A Yes, sir.
- Q After it was transcribed, did you read it over?
- A Yes, sir, I did.
- Q Did you initial it as correct?
- A Yes, sir, I did.

\* \* \* \* \*

# Huntley Hearing. John J. Green for Government, Direct.

Rochester, New York
Tuesday, May 25, 1976
10:00 a.m.

(Jury not present.)

# JOHN J. GREEN,

called as a witness by the Covernment, being first duly sworn, testified as follows:

# DIRECT EXAMINATION

### BY MR. HOULIHAN:

- Q Mr. Green, by whom are you employed?
- A The Federal Bureau of Tovestigation.
- Q And how long have you worked for the FBI?
- A Thirteen years.
- Q And where is your duty station?
- A Buffalo, New York.
- Q I call your attention to the date of July 1st, 1975. Were you employed as a Special Agent on that day?
- A I was.
- Q And were you in the Buffalo Office?
- A I was.
- Q And were you aware at that time that the Buffalo-Elmgrove
  Branch of Marine Midland Bank in Gates, New York, was
  robbed by four individuals?

MR. AMOROSO: Objection. It is

# leading.

THE COURT: Objection is overruled.

- A We received information at the Buffalo Office that a bank robbery had taken place in Gates, New York.
- Q Were any of the details of the bank robbery given to the Buffalo Office at that time?
- A There were.
- Q Would you te what those details were?

MR. AMOROSO: Objection, same

growas, her sy.

THE COURT: Objection is overruled.

A The information was relayed over the phone by an agent from the Rochester Office of the rathod of the bank robbery, that four males had gone into the bank.

THE COURT: How many?

- A Four had gone into the bank and had taken people into the vault area, had used a stolen car as a getaway vehicle, that a gun and a radio had been taken from a police officer who had come into the bank during the course of the robbery.
- Q In the course of your experience, were you aware of any bank robberies that had been conducted in a similar fashion?
- A Yes. There was a bank that was robbed in Buffalo on June 19, 1975, in which there were two brothers who were considered as prime suspects in that bank robbery.

MR. AMOROSO: I object to any of this testimony about a prior act.

THE COURT: Objection is overruled.

- Q At the time that the Buffalo Office was advised of the bank robbery in Rochester, was any license number given to the Buffalo Office with regard to the getaway vehicle?
- A Yes. There was a license number that was given.
- Q What, if anything, did the FBI have in regard to that license number?
- A It was known in the Buffalo Office that a vehicle with this license number --

MR. AMOROSO: Objection, Your Honor. It is not responsive.

THE COURT: Objection is overruled.

- A In the apartment project where the two suspects from the prior bank robbery lived, that a vehicle bearing this license number had gone into that apartment project, and the occupant of the car had stated that they were there to visit the apartment of the two suspects.
- Q And who were the suspects?
- A Jacob and Malachi Mims.

THE COURT: What is the name?

- A Jacob and Malachi Mims. The apartment was registered to Malachi Mims, as I recall.
- Q And Jacob Mims is also known as "Harold Mims"?

A Harold Mims, yes.

MR. AMOROSO: Let the record indicate that his true name is Harold Jacob Mims so we can get away from the "also known as."

THE COURT: Objection is overruled.

Motion is denied.

Q The information that a car bearing the license number of the getaway car had been at the apartment complex of the Mims brothers, where did that information come from?

MR. AMOROSO: Objection, hearsay.

THE COURT: Objection is overruled.

- A It came from the records that the Security Guard kept at that apartment complex.
- Now sometime after this information was received by the Buffalo Office, was any information transmitted then to the Rochester Office regarding the suspects, Harold Mims and Malachi Mims, or any other individuals, and the type of cars that they were driving?
- A Yes. We knew of four vehicles that were available to these individuals. We knew the license numbers of those cars, and there were four that we had, and that information was forwarded to the New York State Police to be on the lookout for those vehicles.
- Q Would you describe what the vehicles were?

A There are only three that I am sure of from my recollection, which was a blue Camaro, a Cadillac, and a Volkswagen. I think the other car was a Cadillac, but that I am not sure of.

THE COURT: We ought to have a metter description than that, the year, color, make, type, body.

- O Do you have any 302's that would refresh your recollection with regard to the make and type of those cars?
- A No, I do not have them with me.
- Q Did you leave the Buffalo Office after you heard this information?
- A Yes. I was ordered by my supervisor to go out to the Williamstown Apartments in Cheektowago and to be ready in the event that these individuals returned to the complex.
- Q Did they return to the complex while you were there?
- A No, they did not.

\*

- Q What, if anything, happened?
- A I was notified over the radio, the FBI radio, that two of the individuals had been arrested by the State Police in Estavia, New York.
- Q that time were you notified?
- A Approximately eleven o'clock, Your Honor.
- What, if anything, did you do after you were notified of this?

- A I immediately drove to Batavia, New York, to the State Police Barracks.
- Q At that time did you have a conversation with Harold Mims?
- A Yes, I did.
- Q And who was with you at the time?
- A Special Agent Dennis Sculimbrene.
- Q Can you tell the Court about how long it took you to get to Batavia? What time did you arrive there?
- A We arrived at the State Police Barracks at approximately 11:43 a.m. on the lst of July.
- Q Was Harold Mims held on any charges at that time?
- A We were told by the State Police that he was being held on speeding charges.
- Q At that time did you then have a conversation and interview with Harold Mims?
- A Yes, I did.
- Q Prior to that interview, did you advise him of his Constitutional rights?
- A Yes. The first thing we did at the beginning of the interview was advise him of our identity as Special Agents of the FBI. We at that time gave him an Advice of Rights form which he read, and he stated that he understood, and he signed the waiver of these rights.
- Q Do you have that with you?
- A Yes, I do.

MR. HOULIHAN: Would you mark this for identification?

(Government's Exhibit 1 marked

for identification.)

Q I show you Covernment's Exhibit 1 marked for identification, which is the Advice of Rights form and --

MR. AMOROSO: I object to that,

Your Honor, as being a conclusion.

THE COURT: Objection is overruled.

- Q This signature says "Jacob Harold Mims," is that correct?
- A That's correct.
- Q And he signed that in your presence?
- A He did.
- Q What time was that signed?
- A It was signed at 11:50.
- Q What rights was he advised of in that Advice of Rights form?

MR. AMOROSO: I object to that.

THE COURT: Offer it in evidence.

You don't have to ask him. It is right there in black and white.

MR. HOULIHAN: I offer G-1 in

evidence.

MR. AMOROSO: May I see it, Your

Honor?

(Government's Exhibit 1 handed

to Mr. Amoroso.)

MR. AMOROSO: I object on the

grounds, No. 1, it is self-serving.

THE COURT: What?

MR. AMOROSO: I object on the

grounds, No. 1, it is self-serving, on

behalf of the defendant.

THE COURT: "Self-serving"?

MR. AMOROSO: May I have a ruling

on that, Your Honor?

THE COURT: Objection is over-

ruled. I don't know what you mean by "self-serving."

MR. AMOROSO: It is, Your Honor,

and he can't testify what the rights are --

THE COURT: He doesn't have to.

He has got it in black and white there and signed by the defendant. Objection is overruled.

MR. AMOROSO: May I have a few

preliminary questions?

THE COURT: Yes.

VOIR DIRE EXAMINATION BY MR. AMOROSO:

( Is it Special Agent Green?

# Huntley Hearing. John J. Green for Government, Voir Dire.

- A Yes.
- Q Special Agent Green, how long have you been a member of the FBI?
- A Thirteen years.
- Q Of course, you attended the FBI Training Center at Quantico, Virginia?
- A I did.
- Q As part of your source as an FBI agent --

THE COURT: This isn't preliminary examination.

MR. AMOROSO: May I be permitted to continue, then?

THE COURT: Go ahead.

MR. AMOROSO: Thank you, Your

#### Honor .

- Q When you arrived at the Batavia State Police Station, who did you arrive with?
- A Special Agent Dennis Sculimbrene.
- Q That is the signature of one of the witnesses on Government's Exhibit 1, is that correct?
- A That is correct.
- Q Did you see Dennis Sculimbrene sign this instrument?
- A I did.
- Q And you signed it, of course?
- A I did.

- Q And you signed it at 11:50 a.m., is that correct?
- A That is correct.
- Q At the same time that Mr. Jacob Harold Mims signed it, is that correct?
- A Right after he signed it, yes.
- Q Of course, he signed his name "Jacob Harold Mims" and not "Harold Jacob Mims," isn't that right?
- A That is what that says.
- Q Did you question him about that when he signed it?

  THE COURT: Is it this defendant?
- A Yes, it is, Your Honor.
- Q You say that he read this piece of paper? Did he read it aloud?
- A No, he did not.
- Q In other words, what you are saying, Agent Green, is that he looked at it?
- A He looked at it. I asked him if he had read it and understood it, and he said that he did.
- Q Did he have his glasses on when he did that?
- A I do not recall.
- Q He wears glasses, and he is here with glasses on this morning (pointing)?
- A Yes.

THE COURT: You don't know whether he can see without glasses?

- A I do not, Your Honor.
- Q You did not, and it is not your policy, to read these socalled rights with a person that is charged with a crime?
- A If I feel an individual does not understand or cannot read them, I will read it to them. I know Mr. Mims better than that.

THE COURT: You know something

#### about Mr. Mims?

- A I do know that Mr. Mims was a college student at one time.

  THE COURT: At one time?
- A Yes.

THE COURT: What college?

- A I think it was the University of Buffalo or Buffalo State.

  I'm not sure which.
- Q You were sure that when he signed this piece of paper that he knew what he was signing?
- A Yes, I am.
- Q As a matter of fact, Agent Green, you told Mr. Mims, the defendant here, that if he didn't sign this, he might be charged as an accomplice to murder or an accessory to murder?
- A No, I did not.
- Q Did you ever say if he signed it, he would only be charged as an accomplice?
- A No, I did not.

- Q Did he read the rights first and then he waiver of rights or don't you know?
- A I do not know.
- Q Did you ask him before he signed it whether or not he understood?
- A I did.
- Q What did he say?
- A He said he understood it. He read it and understood.
- Q I assume this took place in some sort of interview room?
- A An interview room in New York State Police Barracks in Batavia, yes.
- Q Who else was present when Mr. Mims was reading this piece of paper?
- A Agent Dennis Sculimbrene.
- Q Not Special Agent Schaller?
- A No, he was not there at this time.
- Q How about Sgt. Sobolewski of the New York State Police?
  Was he there?
- A I do not know whether he was there or not.
- Q Do you know who Sgt. Sobolewski is?
- A Not by name, no. I may have known that day, but I don't recall him today.
- O Do wom know who the police officer was that stopped Mr.
  Mims for speeding?
- A I met him and talked to him that day, but I don't recall

## Huntley Hearing. John J. Green for Government, Direct.

what his name was.

- Q Did you talk to anybody about this case before you came in here to court this morning other than Mr. Houlihan, United States Attorney?
- A Mr. Sculimbrene and Mr. Schaller.
- Q Did you discuss what you were going to talk about, did you?
- A We read the 302's and the Advice of Rights forms.

MR. HOULIHAN: I offer G-1 in evidence, Your Honor.

THE COURT: It is received.

(Government's Exhibit 1 marked

in evidence.)

#### DIRECT EXAMINATION CONTINUED

#### BY MR. HOULTHAM:

- Q At the time you began to conduct the interview with Jacob Mims, did you keep an interview log?
- A An interview log was kept. I did not keep it.
- Q Who kept it?
- A Special Agent Sculimbrene kept the log.
- After Mims signed the Advice of Rights and the waiver form, that is, Government's Exhibit 1 in evidence, did you have any conversation with him regarding the bank robbery that had taken place in Gates, New York?
- A I did.
- Q What, if anything, did he say?

## A May I testify from my 302?

MR. HOULIHAN: Yes.

MR. AMOROSO: I'm going to

object at this point, Your Honor.

THE COURT: Objection is overruled.

MR. HOULIHAN: Would you mark

this for identification?

(Government's Exhibit 2 marked

### for identification.)

- Q G-2 marked for identification is what is known as a FBI 302, and this was prepared at or about the time of the interview with Mr. Mims, is that right?
- A That is correct.
- Q And this was made from your notes?
- A That is correct.
- Q And then after it was transcribed, it was signed, was it not?
- A That is correct, initialed.
- Q Initialed?
- A Yes.
- Q And what, if anything, did Mr. Mims say to you at that time?
- A Mr. Mims stated to us that he had been picked up by the New York State Police while driving a Cadillac owned by

a James Miller. He said that he was told by the State Police that he had been picked up for a bank robbery that had occurred in Rochester and that he was also arrested for speeding. He told us that he was aware that his brother, Malachi, had also been picked up by the State Police for the same bank robbery. And he believed his brother was injured in a high-speed chase. He admitted that his brother was driving a 1972 Camaro in which the bank robbery loot and the guns used in the commission of the bank robbery were located. He advised us that one of the participants in the bank robbery was one James Miller. He refused to identify the other individual involved. He told us that he had driven to Rochester with at least one of the bank robbery participants, and he had been near the scene of the bank robbery and had observed a police officer entering the bank while it was being robbed. At that point he stated that he wished to talk to his attorney and to Special Agent Richard Schaller with whom he had had prior contact.

- Q Was Mims permitted to call his attorney at that time?
- A A call was made to his attorney, and his attorney was not in, as I recall.
- Q And was Mr. Schaller called at the request of Mr. Mims?
- A He was.

THE COURT: Who is Mr. Schaller?

- A He is a forme Special Agent with the FBI. He was a Special Agent at that time, Your Honor.
- Q Now that interview that you just described, that took place on July 1st, is that correct?
- A That is correct.
- Q And there was a subsequent interview, was there not, at the U. S. Marshall's Office?
- A That is correct.
- Q When was that interview?
- A That was on July 2nd, 1975.

MR. HOULIHAN: Would you mark

#### this for identification?

(Government's Exhibit 3 marked

### for identification.)

- Q Did there come a time that Jacob Mims was transported to Buffalo?
- A That is correct
- Q When was that?
- A That was in the afternoon of July 1st, 1975.
- Q And do you know about what time he arrived in Buffalo?
- A No, I do not. I did not transport him. He was transported by Special Agents Schaller and Sculimbrene.
- Q Did there come a time that you submitted an affidavit in support of a complaint to the United States Magistrate?
- A Yes.

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- Q Do you remember when that was?
- A I would i ave to look at it.
- Q I show you Government's Exhibit 3, which is a copy of the complaint.
- A This would have been taken to the Magistrate on July 2nd.
- Q And the Magistrate was a Buffalo Magistrate, Mr. Maxwell, is that correct?
- A That's correct.
- Q And at that time was the original of that complaint signed by you in front of Mr. Maxwell?
- A That's orrect.

MR. AMOROSO: I'm going to object to that line of questioning for the purpose of this hearing.

THE COURT: Objection is over-

- Q And at the signing of this complaint, the charge of bank robbery against Harold Jacob Mims was authorized by an Assistant United States Attorney, is that correct?
- A That is correct.
- Q fid there come a time that you had another conversation with Harold Mims?
- A That is correct.
- Q And when was that conversation?

- A July 2nd, 1975.
- Q And when was that, what time of day was that interview?
- A I would have to check the interview log. I'm not sure.
- Q Do you have the interview log?
- A No, I don't. Mr. Sculimbrene has it out in the hall.

  And the 302, he also has the 302.

THE COURT: We can go right ahead. It was sometime on July 2nd?

A Yes, it was, Your Honor.

THE COURT: In the daytime?

- A Yes, Your Honor.
- Q And at that time did you talk with Mr. Mims concerning his Constitutional rights?
- A We did.
- Q You say you don't have the 302 from that day?
- A No. Mr. Sculimbrene has it in the hall. It will be brought in.

(Psuse in the proceedings.)

MR. HOULIHAN: Would you mark

these for identification?

(Government's Exhibits 4, 5 and

6 marked for identification.)

Q I show you Government's Exhibit 5 marked for identification, and it appears to be an interview log, is that correct?

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- A This is correct.
- Q And that is signed by you?
- A It is.
- Q And when did you sign that?
- A On July 2nd, 1975.
- Q Does that refresh your recollection of about the time that Mr. Mims was interviewed?
- A Yes, it does.
- Q And who requested the interview of Mr. Mims?

THE COURT: What was the time?

- Q What was the time?
- A The time that the interview started was 1:42 p.m.
- Q Who requested the interview at that time?
- A As I recall, it was Mr. Mims.
- Q And is that noted on your log?
- A Yes, it is.
- And subsequent to your being advised that Mr. Mims would like to talk to you, did you identify yourself again as agents?
- A We did.
- Q Was he then advised of his rights again?
- A He was again given an Advice of Rights form --

MR. AMOROSO: I object. It is

a conclusion.

THE WITNESS: He was then given

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an Advice of Rights form which he said he read and understood.

- Q I show you Government's Exhibit 4 marked for identification. Is that the Advice of Rights form for July 2nd, 1975?
- A It is.
- Q And it is signed there, "Jacob H. Mims," and was that signed in your presence?
- A That was signed in my presence.
- Q And the person that signed that, would you please point him out to the Judge?

THE COURT: Is it the defendant?

- A Yes, it is, Your Honor.
- Q And your name appears there as a witness, is that correct?
- A It does.
- Q The Advice of Rights form indicates 1:46 a.m. that that was given to him, is that correct?
- A That is correct.
- Q And the interview began at what time?
- A The interview began at 1:50 p.m.
- Q During this interview, did you conduct the interview or did Mr. Sculimbrene conduct it?
- A I conducted most of the interview.
- Q I show you Government's Exhibit 6 marked for identification, and that is an FBI 302, is that correct?

- A That is correct.
- Q And that is of the conversation with Mr. Mims at his request, isn't that right?
- A That is correct.
- And what, if anything, did Mr. Mims want to talk to you about at that time?

THE COURT: What did he say?

- A He wanted to give his version of the bank robbery in which he stated it would go back to several years in which he was confined with other individuals, one Elmer Voight,

  James Miller and an Eddic Lee Thomas.
- Q Did he say where he met these individuals?
- A He had met them while he was in jail in approximately 1972.

THE COURT: Where?

- A In Buffalo and in Lewisburg Penitentiary.
- Q And what else did Mr. Mims tell you at that time?
- He told us that he had been paroled from jail in December of 1974 and almost immediately upon returning to Buffalo, he had been contacted by several individuals, including the above-named persons, regarding planning future bank robberies. He stated that he was friends of all the above.

MR. AMOROSO: I'm going to object to that because the agent is not

testifying. He is reading, Your Honor.

THE COURT: Objection is overruled.

THE WITNESS: He told us that the individuals mentioned above and his brother Malachi Mims were interested in banks which they considered possible for successful bank robberies, that he, Jacob Mims, went along on several of these planning jobs and that for some reason or another, he did not like what he saw, and at one point Elmer Voight suggested that they come over to Rochester and look over some banks over here.

Q I notice in the 302 it says that Jacob Mims says that he was consulted on several of these banks. Do you recall whether he used those words, or are those your words?

MR. AMOROSO: Objection, Your Honor. Now the U.S. Attorney is testifying.

THE COURT: Objection is over-

THE WITNESS: no, he used the words they wanted him in on the planning, and they had looked over a couple of banks, and they wanted his ideas of

whether there could be a successful job pulled at these banks, and he specifically mentioned two banks.

- Q And did there come a time that he described that there was some consideration of the Rochester bank robbery?
- A Yes. They drove around the Rochester area looking for a good bank to hit. They saw a Marine Midland Bank near the Kodak company and that Elmer Voight then went into the bank to case it and drew a diagram of the inside of the bank.
- Q Did Mr. Mims tell you what, if anything, happened on June 30th, 1975?
- A Yes. He stated that James Miller went into the bank, talked to the manager under the pretext of opening up an account at that particular bank. Here, again, he was casing the inside of the bank.

MR. AMOROSO: Objection, Your

Honor .

THE COURT: Did he say he was?

- A Yes, Your Honor.
- Q And did he describe any car that would be used as a bank getaway car?
- A A 1973 LeMans Pontiac.
- Q Did he say where that lad come from?
- A It had been stolen in Buffalo, and it was to be used as

#### a getaway car.

- Q Did Mims talk about his participation in the bank robbery on July 1st?
- A He told us that he did not actively participate in the robbery itself, but on the morning of the bank robbery, the participants came to his brother's apartment where he was.

THE COURT: Who were the partici-

#### pants?

- A He said James Miller, Elmer Voight, Eddie Ise Thomas, and his brother, Malachi.
- Q Now did he tell you at that time whether any decision was made regarding Elmer Voight going into the bank?
- A Yes, that because Elmer Voight was white, he was not to go into the bank.
- Q Was there any reason given for that?
- A He would be too easily recognized, because all the other participants were black.
- Q What, if anything, else did he tell you about the happenings of July 1st?
- A He stated that on the morning of the bank robbery the participants came to the apartment, 69 Williamstown Court, Cheektowaga, around six a.m. James Miller asked him. Jacob Mims, to drive Miller's brown Cadillac, because he, Miller, was not a good driver. He said that Miller

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promised him \$700. In addition to Miller being in the car with him, Eddie L. Thomas also went with Mims in the brown Cadillac and that Malachi Mims left for Rochester in the blue Camaro. When they got to Rochester, they went and picked up the LeMans, which he had previously told us had already been put over in the airport here, and that they drove it to a school yard in the general area of the bank. He told us that the school yard was 2.8 miles from the bank and that it took four minutes to drive to the bank. They had made a practice run on the day prior to the bank robbery.

At this point it was still undecided who was going to take the money after the bank robbery, whether it would be Jake or Malachi or one of the others, that it was finally decided that it would be given to Malachi, and he told us that for security reasons they weren't to know where the other one was going after they met immediately after the bank robbery, and they were going to split and not tell each other where they were going. He told us that Miller asked Jake to drive the Cadillac back to Buffalo and that was all that Jake was to do. He stated that out of curiosity and concern for his younger brother, Malachi, that he drove by the bank to see what was happening, and as he did drive by the bank, he saw the police officer going into the bank while it

was being robbed. He then drove in a roundabout direction and ended up back in the school yard where the money was given to Malachi, and he drove off in the Camaro, and that he, Jake, drove the Cadillac and followed Malachi.

- Q Did he say who he met at the school yard?
- A He told us that he met Miller and Thomas, James Miller and Eddie Thomas and Malachi at the school yard.
- Q At any time during this interview, did Mr. Mims request an attorney be present?
- A No, he did not.
- Q And the interview itself was conducted at the request of Mr. Mims, is that right?
- A It was.

THE COURT: When you say
"Mr. Mims," you mean the defendant in
this case?

A The defendant Mims.

THE COURT: Then call him the defendant instead of "Mr. Mims," because there are two "Mr. Mims."

A Yes, Your Honor.

MR. HOULIHAN: I move that Exhibits 3, 4, 5 and 6 be received in evidence.

MR. AMOROSO: I object to

Exhibit No. 4 for the same reason. It is self-serving, Your Honor.

THE COURT: Objection is overruled.

MR. AMOROSO: I have other objections, but I would like to go through them one at a time.

May I have some preliminaries, if Your Honor please, on some of these?

THE COURT: Yes.

#### VOIR DIRE EXAMINATION

#### BY MR. AMOROSO:

Q Agent Green, with respect to Government's Exhibit No. 3, and this is not only a complaint, but --

THE COURT: Now you are talking about Exhibit 3. That is not what we are on now. We are on Exhibits 4, 5 and 6.

MR. AMOROSO: Your Honor, Mr. Houlihan has offered Exhibit No. 3 also.

MR. HOULIHAN: Your Honor, I offered Government's Exhibits 3, 4, 5 and 6.

MR. AMOROSO: I'm going to object to Exhibit No. 3, but I have some preliminary questions, Your Honor.

THE COURT: If you are going to object to it, you don't need any preliminary examination.

MR. AMOROSO: I object to it because it contains purely hearsay, among other things, speculation and hearsay, with respect to Special Agent Green's affidavit attached hereto and made a part hereof.

THE COURT: Objection is over-

MR. AMOROSO: I object to Exhibit No. 4, Your Honor, on the same grounds as No. 1. It is self-serving.

THE COURT: Objection is overruled. I have already ruled on that.

## VOIR DIRE EXAMINATION CONTINUED

## BY MR. AMOROSO:

- Q Now on Exhibit No. 2, let me ask you this question, Agent Green. Did you sign this Advice of Rights and We
- A I did.
- Q And your signature appears thereon, is that correct?
- A It does.
- Q And Special Agent Green, he signed it also?
- A I am Special Agent Green.

- Q I'm sorry -- Special Agent Dennis Sculimbreme.
- A He did.
- Q Of course, this is an Advice of Rights form that you got upon request, as you say, from the defendant, is that correct?
- A It was my Advice of Righ's form which I gave to the defendant and asked him to read it, and if he wished to sign the waiver of rights.
- Q Right, but this was after he said he wanted to talk to somebody? He wanted to talk to you?
- A That is correct.
- Q This was in Buffelo?
- A That's correct.
- Q Was it in Williamsville?
- A No. That was in Buffalo. He was in the custody of the United States Marshal.
- Q Prior to that, he had already spoken to an attorney, isn't that correct, Carl Dobozin from Buffalo, New York?
- A Yes, that's correct.
- Q How many times did he speak to Mr. Dobozin?
- A I don't have any idea. As far as I know, just one time.

  I assume he talked to him the next day.
- Q We were speaking of July 2nd, 1975 now?
- A I have no idea.
- Q Do you know whether he talked to him on July 1st, 1975?

- A I talked to him on the phone one time.
- Q After that telephone conversation, you and other members of the Federal Bureau of Investigation were advised not to speak to the defendant any more?
- A That is correct.
- Q Of course, it is your policy, is it, that after an attorney tells you that, that you go right ahead and pursue your investigation with respect to questioning, is that right?
- A If the defendant requests to see me, yes.
- Q It doesn't make any difference to you that he asked for an attorney, and the attorney has already said that he doesn't want anybody to talk to him?
- A Are you asking would I question him after that, if he requested to see me?
- Q No. I'm asking you whether or not it is your policy
  after an attorney has advised you not to take any statement from the defendant that you do it?
- A I don't follow the statement of attorneys.
- Q All right. Somebody told you that Mr. Dobozin made a phone call, is that right?
- A That is correct.
- Q Who was that, by the way?
- A Mr. Schaller.
- Q Agent Schaller?

## Hu wey Hearing. John J. Green for Government, Voir Dire.

- A Agent Schaller.
- Q He is a Special Agent in the Federal Bureau of Investigation?
- A He was at that time, yes.
- Q He isn't any more?
- A No, he is not.
- Q Of course, that, to you, meant that all questioning and all interrogation and all conversation with this defendant were to terminate, isn't that right, sir?
- A As long as the defendant requested it, yes.
- In other words, you don't know whether or not this defendant was under the influence of drugs or alcohol or anyhing else on the date of July 2nd, 1975?

THE COURT: Did you have any reaso, to think he was?

THE WITNESS: He was not, and I have reason to believe he was not, since he was in the custody since eleven o'clock the prior day, over twenty-four hours.

- Q Was he sick, being treated for ulcers or anything like that?
- A I have no idea.
- Q Did you ask him?
- A No, I did not.

MR. AMOROSO: Your Honor, then

I object to this on the grounds that pursuant to the Miranda decision that this
defendant was questioned after an attorney
had indicated to the Federal Bureau of
Investigation, through Agent Schaller to
Agent Green and Sculimbrene, that he was
not to be questioned and talked to with
respect to this --

THE COURT: Objection is overruled.

MR. AMOROSO: Thank you.

## VOIR DIRE EXAMINATION CONTINUED

### BY MR. AMOROSO:

\*

- Now with respect to Government's Exhibit No. 5 marked for identification, what is an interview log, anyway?
- A These are notes that are taken during the course of the interview to show the times that the interview started and the times he was advised of his rights, the identity of the special agents, any time he requested to use the lavatory, any time that he was given any food or any drink or Coke, or things like this.
- Q In other words, there would be one of these available for the statement taken on July the 1st, 1975, too, isn't that right?
- A There is one available for that.

THE COURT: This is cross examination -- this isn't a preliminary examination.

MR. AMOROSO: All right, Your Honor. I will get back to it.

- Q This, of course, is in your own handwriting, is it not?
- A It is in Dennis Sculimbrene's handwriting.
- Q Of course, this comprises, more or less, a time sequence of not only interviews but whenever he was re-advised of his rights, or he went to the bathroom, and so on and so forth?
- A That's right.
- Now with respect to the Federal Bureau of Investigation
  302, which is Government's Exhibit No. 6 marked for
  identification, did you make any notes with respect to
  the items or articles or the interviews that are contained
  with respect to this FBI 302?
- A Mr. Sculimbrene did.
- Q You did not?
- A No.
- Q And did you see Mr. Sculimbrene making those notes, sir?
- A I did.
- Q And I think you testified in your direct examination that this 302 form was prepared from those notes, is that correct?

MR. AHOROSO: I object to it on the grounds that it is hearsay.

THE COURT: The objection is overruled.

MR. AMOROSO: I further object on the grounds that it is self-serving, and I further object on the grounds that it is entirely --

THE COURT: When you say "self-serving," who do you mean, serving who?

MR. AMOROSO: Serving for the

Government, Your Honor.

THE COURT: Objection is overruled. I hope the Government won't introduce any evidence that is unfavorable to them.

MR. AMOROSO: I wish they would,
Your Honor, and I further object on the
grounds that it is highly prejudicial with
respect to any statements in here with
respect to this defendant, with respect
to the statement he made about any prior
activities with respect to this matter.

THE COURT: Objection is over-

Honor .

MR. AMOROSO: Thank you, Your

By the way, Your Honor, may I have one more question?

THE COURT: Yes.

MR. AMOROSO: Did you testify before the Grand Jury in this matter?

A No, I did not.

(Government's Exhibits 3, 4, 5 and 6 marked in evidence.)

MR. AMOROSO: Your Honor, the defendant feels vomitous. May be be taken from the courtroom, please?

THE COURT: What are you saying?

MR. AMOROSO: He feels like he
is going to vomit, Your Honor. May he be
taken from the courtroom?

THE COURT: All right.

(Recess taken.)

(Jury not present.)

MR. AMOROSO: Your Honor, the defendant apologizes to the Court for any inconvenience.

DIRECT FXAMINATION CONTINUED

BY MR. HOULIHAN:

Q Mr. Green, you were aware, were you not, prior to July 2nd.

\* \* \* \* \* \*

(Pause in the proceedings.)

MR. AMOROSO: Thank you, Agent

Green. That is all I have.

(Witness excused.)

M. DENNIS SCULIMBRENE.

called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HCULIHAN:

- Q Mr. Sculimbrene, by whom are you employed?
- A By the FBI.
- Q How long have you worked for the FBI?
- A Three years.
- Q And in the course of your duties as a Special Agent with the FBI, did there come a time that you had an interview with Jacob Mims?
- A Yes, there was.
- Q And do you recall when that was?
- A July 1st, last year.
- Q And who was with you at that time?
- A Originally Agent Green, and then followed by Agent Schaller.
- Q And just prior to the interview of Jacob Mims by Mr. Green, was he given an Advice of Rights and waiver form?
- A Yes, he was.
- Q And did you watch him while he read it?

- A Yes, I did.
- Q And I call your attention to Government's Exhibit 1 in evidence. Did you see Jacob Mims sign that?
- A Yes, I did.
- Q And is the Jacob Mims that signed it, is that the defendant here?
- A Yes, it is.
- Q And you signed as a witness, did you not?
- A Yes, I did.
- Q And on July 2nd, you also had an interview with Mr. Mims, is that right?
- A Yes, I did.

THE COURT: That was in Buffalo?

- A In Buffalo.
- Q And that Government Exhibit 4 is an Advice of Rights and Waiver signed by Mr. Mims?
- A That is correct.
- Q And you witnessed that, did you not?
- A Correct.
- Q I call your attention to Government's Exhibit 5 marked for identification, which appears to be an interview log. Is that done in your handwriting?
- A Yes, it is.
- Q And referring now to the interview on July 2nd for which that is the interview log, do you recall at whose request

the interview on July 2nd was?

- A Yes, I do. It was at the request of the defendant, Mr. Mims.
- Q And that is noted on your interview log?
- A Specifically.
- Q During the interview on July 1st, 1975, did you keep a log?
- A Yes, I did.

MR. HOULIHAN: Would you mark

this for identification?

(Government's Exhibit 7 warked

## for identification.)

- Q I show you Government's Exhibit 7 marked for identification, and this is an interview log of July 1st, 1975?
- A Correct.
- Q And this was kept at the time that the interview was conducted by Special Agent Green at the Batavia State Police Barracks?
- A Right. Agent Green and I were there originally. Then
  Agent Schaller came for a period of time. Agent Green and
  I left, and Agent Green and I came back. I kept the log
  for the entire interview, in the entire time that we were
  together.
- Q And this entire interview log is four pages, is that right?
- A That's correct.
- Q According to your interview log, what time did you arrive

at the Batavia, New York, State Police Barracks?

- A 11:45 a.m. on the 1st of July.
- Q And what, if anything, were you advised at that time?
- A We were advised of the location of the defendant. The State Police told us that he was up on the second floor of the building, that he had been picked up while speeding in a 1973 Cadillac. I believe the license plate number is 342EFQ.
- Q And it was subsequent to that that you had the interview with Mr. Jacob Mims, is that right?
- A That's correct.
- Q Did there come a time that Mr. Mims asked to speak with Special Agent Schaller?
- A Yes. I have noted that approximately 12:17 or specifically 12:17 Mr. Mims requested that FBI Agent Richard Schaller be present inasmuch as he was more familiar with him.

MR. AMOROSO: I object, Your

Honor. Conclusion.

THE COURT: Did the defendant

indicate that he knew Schaller?

- A Yes, he did. That is the reason why he was asking for him to come.
- Q Did he ask to call his attorney at that time?
- A Well, he had been advised of his right to call an attorney at approximately 11:46. He signed the warning and waiver.

THE COURT: That isn't the question. The question is did he ask to coll his attorney?

- A Yes, he did. He called his attorney. He asked to call his attorney at 12:35, and since he was still in the custody of the State Police, the State Police were the ones who gave him permission to call.
- Q This log also goes into the time when Special Agent
  Schaller arrived and also talks about Mims was permitted
  to use the bathroom facilities. He was also given a can
  of Coke, and there was a telephone call, was there not,
  by --

MR. AMOROSO: I'm going to object.

He is reading something that is not in

evidence.

MR. HOULIHAN: I will offer G-7.

MR. AMOROSO: Your Honor, may I

have a moment?

(Pause in the proceedings.)

MR. AMOROSO: I have no objection,

Your Honor.

(Government's Exhibit 7 marked in evidence.)

MR. HOULIHAN: Would you mark this for identification?

(Government's Exhibit 8 marked

#### for identification.)

- Q The interview log shows that at 2:05 the attorney, Mr.

  Dobozin, called and advised that Mims be asked no further

  questions and that he was going to represent Mims, and the

  interview was terminated at that point, is that correct?
- A That is correct.
- Q And Mims was advised that he was going to be fingerprinted and photographed by the New York State Police, and Hims wanted to know whose custody he was in, is that right?
- A That's correct.
- Q And whose custody was he in at that time?
- A He was in the custody of the State Police.
- Q And he went through their procedures of fingerprinting and photographing, is that right?
- A Yes, he did.
- Now the remaining portion of this interview log shows that
  AUSA David Larimer was contacted and authorized the prosecution of Mims, and Mims was formally advised --

MR. AMOROZO: Your Honor, the defendant feels he has to get something to est.

THE COURT: You can eat the same time I do, when you get through here.

Q And Mims was advised that he was arrested for bank robbery

at that time, at 3:05, by Agent Schaller, is that correct?

- A Yes, it is.
- Q And he was permitted to see his mother, his sister, his girlfriend, his brother Malachi, before being transported to Buffalo?
- A Yes, he was.
- Q On the morning of July 2nd, did you have occasion to keep an interview log of Jacob Mims?
- A Yes, I did.
- Q What were your duties on that day?
- A They were mostly logistical in nature. We had to have the clothes that Mr. Mims was wearing. We had them entered as evidence. We had to have a clothing swap, and we made arrangements with his girlfriend and sister, I believe, to do that, and he was in my custody in the FBI building in Buffalo the morning prior to the hearing.
- Q I show you Government's Exhibit 8 marked for identification, and that is the interview log of the morning of July 2nd, 1975?
- A Yes.
- Q And these are the periods of times, and this records what Mr. Mims was doing on that morning?
- A That's correct.

MR. AMOROSO: I'm going to object to these leading questions.

THE COURT: Objection is over-

ruled.

MR. HOULIHAN: I offer G-8.

MR. AMOROSO: No objection, Your

Honor .

(Government's Exhibit 8 marked in evidence.)

- Now this interview log, Government's Exhibit 8, shows that Mr. Mims was picked up at 9:06 at the Erie County Holding Center, that he arrived at the Buffalo Office of the FBI and that he was allowed to call Janice McNamee, his girl-friend, to make further clothing arrangements for himself and for his brother, Malachi, and he was permitted at that time, as well, to call his Probation of ficer, was he not?
- A That's correct.
- Q And at any time during that morning, was he permitted to confer with his attorney?
- A Yes, at 9:24 he called his attorney.
- Q And did his attorney arrive at the FBI office on that day?
- A No, he did not. He talked to him over the phone. He saw him later in person at the hearing.
- Q Now I call your attention to the time 11:17, and the notation there, "Allowed to confer with attorney." Is that Mr. Dobozin?
- A That is Mr. Dobozin, and that took place at the Magistrate's

Office in Buffalo, New York.

- Q So at 11:08 you left the FBI office for the U. S. Magistrate?
- A That's correct.
- Q Now the hearing was at 11:32. The hearing began, and after the hearing, Mims was allowed to confer with the attorney briefly, and then taken to the U. S. Marshal and then turned over to the U. S. Marshal, is that correct?
- A That's correct.
- Q Subsequent to that conference with his attorney at 11:17 and subsequent to the hearing before the Magistrate and the conference with his attorney after that, Mr. Mims requested that he be interviewed by Mr. Green and by you, is that correct?
- A That is correct.
- Q As a matter of fact, was it around 1:42, as is shown on Government's Exhibit 5, is that right?
- A That's correct.
- I call your attention just for a moment back to Exhibit 7 in evidence. At 5:14 on July 1st, it says that Mims was advised that arrangements in getting an initial appearance before the Federal Magistrate were being attempted. Did the FBI try to get the Federal Magistrate to hear that case that day?
- A Yes, we did.

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- Q Was there s hearing available on that day?
- A I don't believe so. I do not personally make those arrangements.
- Q The interview log says that it appeared that the hearing would not be held until July 2nd?
- A Correct. Someone told me that they would not, and I relayed this to Mr. Mims.
- Q And at 5:58 he was advised definitely that he would have the hearing on July 2nd, is that correct?
- A That is correct.
- Q And he made no statements? There were no statements subsequent to the time that he completed the interview with Special Agent Schaller and was transported over to Buffalo and until the next day at 1:42, is that right?
- A During the ride back to Buffalo, Mr. Mims did make some comments about concerning some bank robberies.
- Q Did he in your presence?
- A Yes, he did. He did this entirely of his own will.

MR. AMOROSO: I object. That is a conclusion. I ask that be stricken.

That is a question for the Court.

THE COURT: Objection is over-

ruled. Motion denied.

- Q Was this in response to a question?
- A Mr. Mims just started talking to Mr. Schaller.

## Huntley Hearing. M. Dennis Sculimbrene for Government, Direct.

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- Q He started talking?
- A That is correct.
- Q And to Mr. Schaller?
- A That's correct.

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- Q And Mr. Schaller was present at that time?
- A Mr. Schaller and Mr. Mims were in the back of the car, and I was driving the car.
- Q So you were there and you heard Mims --
- A I overheard the conversation, yes, sir.
- Q I show you Government's Exhibit 2 in evidence --

THE COURT: It wasn't marked in evidence. It is a 302.

MR. HOULIHAN: Well, Agent
Schaller is going to testify to a portion
of this as well before I offer it.

- Q This is a 302 done by you, Mr. Green and Mr. Schaller on the occurrences of the day of July 1st, is that right?
- A That is correct.
- Q And that includes the statements that were made by Mr.
  Mims while he was returning to Buffalo in the car?
- A That is correct.
- Q Your recollection is that when Mims started talking in the car, it was not in response to any questions, is that right?
- A No, it was not.

MR. HOULIHAN: I have no further

#### questions.

## CROSS EXAMINATION

#### BY MR. AMOROSO:

- Q Did you testify before the Grand Jury, Agent Sculimbrene?
- A No, I did not.
- Q Did you make any statements or any other reports with respect to this incident?
- A I believe there are three 302's entered in evidence as Government's Exhibits right now.
- Q Isn't it a fact that you took notes down and then transcribed them on the 302 forms? You were the agent that was with Agent Green, were you not?
- A Yes, I was.
- Q And you are the one that took the notes down in a little notebook, isn't that right?
- A Yes, I was.
- Q Do you have that notebook with you?
- A No. I do not. They were rough notes which I immediately transcribed when I got back to Buffalo.

MR. AMOROSO: May I be permitted to see that notebook, Your Honor, please?

THE COURT: You can as far as
I'm concerned. He said he didn't have it.
I'm sure I can't make him produce it if he hasn't got it.

\* \* \* \* \*

sister and girlfriend, I believe.

- Q Didn't you and Agent Green or someone else in the employ of the FBI ask if you could go to his apartment to get clothes for him?
- A I don't recall. As I can best recollect, the defendant called his girlfriend or sister and had this done, and they are the ones that brought the clothes down.
- Q Do you know whether or not Mr. Mims had a conversation with his attorney that day?
- A Yes, he did have a conversation.
- Q What time was that?
- A It is on the log, if I could refresh my memory.

MR. AMOROSO: If it is on the log, I can check it. Thank you. That is all I have.

MR. HOULIHAN: I don't have any further questions of this witness.

(Witness excused.)

MR. HOULIHAN: The Government calls Agent Schaller.

RICHARD F. SCHALLER,

called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. HOULTHAN:

Q Mr. Schaller, by whom are you employed?

- A I am employed by the State of New York. I am a Special Investigator for the State Special Prosecutor's Office investigating nursing homes.
- Q You retired from the FBI, did you not?
- A Yes, I did.
- Q How long were you with the FBI?
- A Twenty-five years.
- Q And during the year 1975, July of 1975, were you a Special Agent with the FBI?
- A Yes, sir, I was.
- Q And on July 1st, 1975, did there come a time that you had a conversation with Harold Jacob Mims?
- A Yes, sir.
- Q And where was that conversation?
- A That was in the State Police Barracks at Batavia.
- Q And why did you go there to interview Jacob Mims?
- A I was notified that Mr. Mims asked to see me.
- Q Did you know Mims prior to that time?
- A Yes, sir.
- Q And what was your relationship with him prior to July lat?
- A Well, it extends over some period of time. I met him by 1966 or 1967, during the course of an investigation of a bank robbery, and throughout the years I have had other occasions to meet him or to interview him for different purposes.

- Q Did you have a confidential relationship with him at any time prior to July 1st, 1975?
- A Yes, sir.
- Q And what were the terms of the confidential relationship?
- A The terms of the relationship were that he would provide information to me about criminal activities on a confidential basis, that is, he would furnish information to me, and I would not divulge his --

MR. AMOROSO: I'm going to object at this point, if Your Honor please.

THE COURT: I will sustain the

objection.

- On July 1st, 1975, you were called to the Batavia Barracks of the New York State Police by Mr. Mims. Did you have an interview with Mr. Mims that day?
- A Yes, sir, I did.
- Q What, if anything, did he say in the interview?
- A May I have my notes, please?
- I show you Government's Exhibit 2 marked for identification, and that is a 302, is it not, of the interview with Mims on July 1st?
- A Yes, sir, it is.
- Q And prior to the time of your interview, did you advise Mr. Mims of his rights, his Constitutional rights?
- A Yes, sir, I did.

- Q Did he execute an additional waiver of rights at that time?
- A Not at the time I spoke to him.
- Q What rights did you advise him of at that time?
- A I told Mr. Mims he had the right to remain silent, that anything that he said could be used against him in court. I told him that he had a right to an attorney, that if he could not afford an attorney, one would be provided for him. I told him if he decided to waive his rights and answer questions that he could stop answering questions at any time. I told him that any other agreements we had in the past were no longer in effect, and especially the agreement that anything he said would not be used against him. I told him in the past if he made any statements to me that I would not be able to use it against him, but that did not hold true now, and if he made any statements to me, they could be used against him in court.
- Q Did you ask him whether he understood that?
- A I asked him if he understood it, and he said he would be willing to waive his rights and talk to me and answer questions.

THE COURT: Didn't you know then that he had already that day executed a waiver?

A Yes, Your Honor, I did, but I wanted to make certain that he understood from me, and not only that he understood from me his rights but that he understood any prior agreements that we had were no longer in effect.

THE COURT: All right.

- Q Did Mr. Mims then have an interview with you?
- A Yes, sir.
- Q Was anyone else present at that time?
- A During most of the time when Mr. Mims spoke to me, no one else was present.
- Q At whose request were you slone with him?
- A At Mr. Mime' request.
- Q What, if anything, did Mr. Mims tell you during that interview with him?
- A Initially, and this was during the time that Mr. Green and Mr. Sculimbrene were also in the room with me, and Mr. Mims wanted to know on what charges he was being held, and I told him that he was being held on speeding charges by the State Police, that he had been arrested by the State Police. He told me that he had already told Mr. Green and Mr. Sculimbrene enough that he was going to be arrested on the bank robbery. I told him, however, that we had not completed the unitial phases of our investigation, that we had not had an opportunity to discuss it with the United States Attorney to see whether he would authorize the issuance of a warrant; therefore, he was not under arrest by the FBI but he was in custody of the State

- Police. I did tell him, though, that he would not be in custody, but if he tried to escape that I would take him into custody, since we did have some information about his involvement in the bank robbery.
- Q Did he give you any information at that point concerning his involvement in the bank robbery?
- Yes. It was after this point that he asked to speak to me privately, and Mr. Green and Mr. Sculimbrene left, and it was just Mr. Mims and I in the room. And at that time he told me that he was involved with his brother, Melachi Mims, and James Miller and two other people in the bank robbery of the Marine Midland Bank that morning. He said he had assisted in planning this robbery. He said that he, himself, could not afford to be seen in the bank because he had been involved in a number of other bank robberies before and had been convicted twice, on two occasions -let's put it that way, he served time twice for bank robbery, and he knew if he went in the bank himself, that he would be recognized, but he assisted his brother, Malachi Mims, and James Miller and others in planning the robbery. He said they discussed it with him, and since he had experience in robberies, he gave them advice. He said that on a Sunday night a stolen automobile was driven from Buffalo and parked in the airport at Rochester. That was Sunday night, June 29th. He said on the morning of the

robbery in Rochester, which was that morning I was speaking to him, which was July 1st, he had driven to Rochester in James Miller's Cadillac with James Miller and with one other man. He said that his brother, Malachi Mims, had driven to Rochester in a 1972 blue Camaro. He didn't say how the other man who he said was involved in this thing got to Rochester. He said that the stolen automobile, which was a Pontiac LeMans, had been picked up at the Rochester Airport and had been used as a getaway car in the robbery of the bank that morning. He said he was standing in the vicinity of the bank, and he observed his brother, Malachi Mims, James Miller and one other, go into the bank to rob it. He said after they were in the bank he observed a police officer going in the bank, and when he saw the police officer in the bank, he took off and departed. He met his brother, Malachi Mims, James Miller and the other man, who was in the bank, in the school parking lot. They changed clothes. They put some of the clothes they had worn in the bank robbery, some of the guns and some of the money in the trunk of Malachi Mims' car. He said he was driving back to Buffalo, and his brother was driving back in the blue Camaro. He said he was driving back to Buffalo in the Cadillac, which he had driven the others to the bank, to Rochester that day. He said that he knew he had already served two sentences

for bank robbery, and he was hoping if he testified for the Government that the Judge would take that into consideration, and he would get a lighter sentence. I told him I couldn't make any promises to him.

He was also interested in knowing whether or not he would be given a reduced bond or bond which he could make. I told him I couldn't make any promises to him about his bond or about any eventual sentences, that the Magistrate himself would set the amount of bond and that at the time of any guilty plea, the Court would set the sentence.

About this point in time Mr. Mims said he would like to talk to his attorney. I telephoned his attorney, Mr. Dobozin. Mr. Dobozin was not in the office. A short time later Mr. Dobozin called me. I left the telephone number which I could be reached, and I left the message why I was calling. Mr. Dobozin called, and Mr. Mims spoke to him on the telephone. Mr. Dobozin had spoken to me on the telephone, and he said that he did not desire that I interview Mr. Mims until he had an opportunity to talk to him.

- Q Did you ask him any further questions after Mr. Dobozin told you not to ask him any further questions?
- A No, sir.
- Q He was then processed, I understand, by the New York State Police on the traffic charges, is that right?

# Huntley Hearing. Richard F. Schaller for Government, Direct.

- A Yes, sir.
- Q Then he was transported to Buffalo by you and Agent Sculimbrene, is that correct?
- A Yes. I notified Mr. Mims sometime during the time that he was being processed that the United States Attorney had authorized a warrant, and he was being taken into custody by the FBI and would be taken to the Buffalo FBI office.
- Q When you drove back to Buffalo, Agent Sculimbrene drove the car, is that correct?
- A That's right.
- Q And you were in the back seat with Mr. Mims?
- A Yes, sir.
- Q Did the come a time that Mr. Mims made any statements to you while you were driving to Buffalo?
- A Yes. While we were driving to Buffalo, Mr. Mims said he was interested in getting released on bond. He said that he would be willing to plead guilty to a conspiracy charge on the bank robbery that morning, and he would also be willing to plead guilty in connection with two other bank robberies in Buffalo to conspiracy charges, and that he would then testify for the Government about all of these bank robberies if he were allowed to plead to the conspiracy charges. I told him about this stage, "Look, I can't make any promises to you. It is up to the United States Attorney

to decide whether or not he is going to charge you with conspiracy or the bank robbery itself, and it is up to the United States Attorney whether or not he is going to allow you to plead to any conspiracy charges, and I can't promise you snything about the bond, because especially there was a very serious bank robbery this morning. A gun was taken away from a police officer and was pointed at him."

So I told him I couldn't make any promises to him.

Then, of course, while en route he said, "I will talk to
my attorney, and if my attorney agrees, I can plead
guilty to these charges. I can tell you where \$17,000
was hidden that was taken from another bank robbery."

- Q The statements that were made by Mr. Mims in the car, were those statements in response to questions by you?
- A lio, they were not. They were just comments that he made to me. He was asking me questions and telling me what he would do and could he be released, and my response to him was that I had nothing to do with that.
- Q In fact, your 302, which is Government's Exhibit 2, notes that no questions were asked of Mims after the interview was terminated at 2:05, is that right?
- A Yes, sir.

MR. HOULIHAN: I offer G-2 into evidence.

MR. AMOROSO: May I have a

moment, please, Your Honor?

(Pause in the proceedings.)

### VOIR DIRE EXAMINATION

#### BY MR. AMOROSO:

- Q Did you make this report out yourself, Mr. Schaller?
- A I dictated part of it myself, and Mr. Sculimbrene was with me. We both dictated it together. He dictated part and I dictated part. It was the same stenographer.
- O Did you do that on a machine, or was it a stenographic reporter like this man here (indicating)?
- A No, not necessarily like him (indicating), but it was a stenographer.
- Q Did you make any notes of this conversation?
- A At the time?
- Q Yes.
- A Yes, I did.
- Q Those notes, I assume, are now destroyed?
- A Yes, they were. After I reported the interview and compared the report of the interview with my notes, I destroyed my notes.

MR. AMOROSO: I have no objec-

tion.

(Government's Exhibit 2 marked in evidence.)

MR. HOULIHAN: I have no further questions.

#### CROSS EXAMINATION

#### BY MR. AMOROSO:

- Q On July 1st, 1976, what time did you arrive at the State Police Barracks?
- A I can tell you approximately, if I could have my --
- Q Do you want the 302 report?
- A No, no. There is a log that was prepared.
- Q Well, there are three of them here. Take a look.

## (Documents handed to witness.)

- A I arrived approximately 1:20 p.m.
- ? 'ho did you arrive there with?
- A By myself.
- Q Was Agent Sculimbrene and Green there?
- A Yes, sir.
- Q And there were in the room with Mr. Mims when you went up to the room?
- A Yes, sir.
- Q And was enyone else in that room?
- A Not that I recall.
- Q And can you tell me whether or not you know if Mr. Mims was advised of his rights prior to your going into that room?
- A I was informed that he was advised of his righte, yes.

\* \* \* \* \*

Rochester, New York
Thursday, July 20, 1976

MR. HOULIHAN: May it please the Court, counsel, ladies and gentlemen of the jury: The evidence in this case shows beyond any reasonable doubt that Karold Jacob Mims is guilty of the crimes charged in this Indictment.

Judge Burke will charge you that the Government has the burden of proof in this case and that the burden of proof is also on the Government, and it never shifts. The Government doesn't shy away from its responsibility. It is guaranteed by the Constitution that we must prove every element of this crime beyond any reasonable doubt. Now this doesn't mean to a mathematical certainty. It means beyond a reasonable doubt, and Judge Burke will charge you what "reasonable doubt" means.

Your responsibility as jurors is to decide the ssue of fact, to resolve doubts based on the evidence and to impartially weigh and carefully consider the complete case. In doing that, you determine the credibility of the witnesses. You watched the witnesses testify, and you may examine them according to your own common sense and life experience to determine whether they are telling the truth.

For example, there is no question that there are inconsistencies. There is no question that Richard Ford, when he gave a statement to the FBI, he said that there were three people in the bank, and he explained to you that at that time it was right after the bank robbery, and that it was a violent experience for him. He was nervous and that after seeing the photographs that he realized that there were four.

There is no question that there are going to be inconsistencies in the statements of Delores Eldridge or Martha Wagner and that that experience that you will see through the photographs was a very scary experience. But the Judge will charge you that if you think that their inconsistencies were as a result of an intentional act on their part, then you can disregard it to that extent. But I think that you should weigh the testimory in accordance with your common sense. It is likely that there are going to be some minor discrepancies, and in addition, if there are minor discrepancies, can we prove them some other way? Is there any question that there were four people in this bank robbery?

You will see a group of photographs here that are admitted as Government's Exhibit 1, I believe, and this group of photographs, twenty-nine photographs, will show how the people entered the bank and show one

Richard Ford walking up towards the vault. It shows the sequence where the police officer comes into the bank, and the gun is held to his head. There are several pictures that have numbers on them to show how many people wers actually involved in this bank robbery. So ask yourself whether any inconsistencies in their testimony mean anything.

Now in addition to weighing the credibility of witnesses, the jury may make reasonable inferences from the facts. The Judge will charge you what direct evidence is and what circumstantial evidence is. And circumstantial evidence is a proof of chain of circumstances --

MR. AMOROSO: Your Honor, I'm going to object to that. That is the province of the Court. I don't mean to interrupt Mr. Houlihan's summation, however.

THE COURT: If counsel states anything in his address to the jury that isn't substantiated by the evidence, you put it down to argument.

MR. HOULIHAN: Circumstantial evidence being that evidence that proves the chain of events from which the offense can be inferred. For example, if you go to bed at night and there is no snow on the ground, and you get up in the morning and there is snow on the ground, you may infer that it snowed sometime during the night.

That is the reasonable inference.

I ask you not to be confused about the very talk that you hear that says, "Oh, it is just a circumstantial case." There is absolutely nothing wrong with circumstantial evidence. Crimes are generally not performed out in public. Getaways are not performed out in public subject to public scrutiny, and photographs. Fortunately, in this case we do have some photographs of the crime seems, but we know that the participants in that bank robbery wore masks similar to the stocking in evidence.

But you, as jurors, are to use your common sense and experience in evaluating all of this evidence, and that is what I ask you to do in considering the Government's proof.

I would like to call to your attention some items of evidence which I think are particularly pertinent in focusing on the issues in this case. Now the Indictment charges three separate Counts. It charges that on or about July 1st there was a bank robbery at the Marine Midland Bank in Rochester. The deposits were insured by the Federal Deposit Insurance Corporation. There is no question about that. We have got Government's Exhibit 9 in evidence, and that is the FDIC certificate. That provides the Federal jurisdiction in the case.

And that robbery involved the taking by force and violence and by intimidation and from the presence of employees in the bank certain money belonging to the care, custody, control and management and possession of that bank.

Now we have had the testimony of Richard Ford, who told us about four men coming into the bank and told about a gun being held to his head. Now we have got two of the guns actually used in the bank robbery that have been identified by the witnesses, the sawed-off shotgun and this .32 caliber revolver. And Mr. Ford, you recall, described another gun that was right near his face. It was a dark handgun held by another individual.

Whether it was a violent bank robbery, you can see for yourself from the testimony of the witnesses. Delores Eldridge testified that she was required to open the safe and that it took her three times. Can you in gine the fear in her heart, in her mind trying to open that safe and having someone say, "If she doesn't open it this time, plug her." Can you imagine the fear in her mind in trying to protect the lives of the people in that bank and trying to open that safe?

Martha Wagner testified that there were four people involved in the bank robbery. Pictures bear that

out. She described the people in the bank robbery.

As you will recall, Mr. Amoroso, in his crossexamination, asked Mr. Ford if he identified anybody,
and he picked out a picture of the first man that entered
the bank, which was Jenses Miller. This is Defendant's
Exhibit 2 in evidence. James Miller, as you recall, is
one of the names given by Harold Jacob Mims to the FBI
as one of the participants in the bank robbery.

Martha Wagner said she made an identification. She couldn't be positive, but she said that a certain person resembled one of the people in the bank, and she picked out Defendant's Exhibit 3 in evidence, which is Eddie Lee Thomas. He was another individual that was identified by Harold Mims as being one of the perticipants in the bank robbery.

There was some cross-examination of Mr. Ford saying, "Well, Mr. Ford, you were just suspicious the day before, weren't you? Why? Because somebody asked about a checking account? What reason did you have to be suspicious?"

Well, we know from the next day that he had a perfect right to be suspicious. We know that Jacob Mims in his admission to the FBI agent said that the bank was cased the day before, and the individual that cased it was James Miller. And that was the first person

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coming in the doors as identified by Defendant's Exhibit 2, by Mr. Ford. And we have got some photographs of that, which is Government's Exhibit 10 in evidence.

Yes, he had the right to be suspicious, because the next day four men came into that bank and held the guns on these people and committed a bank robbery of some thirty-one thousand dollars worth of money taken from that bank. People were locked in the vault, and a police officer assaulted.

I don't think there is any doubt that there was force and violence and intimidation used in this bank robbery. There is no doubt that there was money taken. FBI agents testified that they found money in the trunk of the car of the Camaro. We have got photographs of all that money, which as you know from the testimony, was returned to Marine Midland Bank. The money was found in the 1972 blue Camaro driven by Malachi Mims. We know that Jacob Mims in his admission to the FBI agents said that the bank robbery loot was in the 1972 Camaro.

And what about the guns in this bank robbery?

Now we know about the bank robbery, and we know about certain guns. We know, for example, that the revolver doesn't fire. We know that that was tested, using the same cartridges that were found in Government's Exhibit 28,

which were found in the car, loaded in the revolver. We know that it was tested, and that that gun wouldn't fire.

Now the second Count is armed robbery. And this accuses the defendant of assaulting Richard Ford, an employee of the bank. Now the fact that this particular gun doesn't fire doesn't mean that you can't make that finding. Remember, we have got another gun that is not here involved in this bank robbery. We have got the gun taken from the police officer that was loaded, that does work. And we have got a sawed-off shotgun that we are absolutely sure works, because Agent Carney tested it and testified that it works. He used one of the cartridges that was loaded into that sawed-off shotgun. The question is whether Ford was assaulted with it. Ford testified that the gun was pointed at him. But you don't have to take Mr. Ford's testimony on that. You can look at these photographs, and you will be able to see that as Mr. Ford was welking toward the wault that the sawed-off shotgun being held by this individual here is being pointed at Mr. Ford. There is no question that that gun worked. Was Mr. Ford assaulted? The photographs show that.

Count 3 is the conspiracy charge that he conspired with other people to commit this bank robbery. The main

question in this case is whether Harold Jacob Mims, the defendant, committed this bank robbery.

Now we have a lot of evidence -- the evidence is circumstantial because we don't have eyewitnesses. But you can make a reasonable inference from all of this evidence to conclude that happened on July 1st, 1975, at Marine Midland Bank.

We have the testimony of Agents Green and Schaller regarding the admissions of the defendant. Now you recall that on the day of July 1st when Harold Mims was arrested he made a statement to Special Agent Green, and he asked to speak to Schaller. and then he told Schaller that he had already made admissions to Green, enough to be charged with bank robbery. And at that time Harold Jacob Mims made admissions and said that there were three people that robbed the bank, and we know now, and we know from the photographs that there were actually four people in the bank. When he spoke with Schaller, he mentioned the fifth individual that he wouldn't identify. You recall on the first day when he refused to identify two individuals, and the next day when he spoke to Green, at his request, ar Mims' request, he then identified those two individuals as Eddie Lee Thomas and Elmer Voight. Elmer Voight, as you recall from Mims' admissions, is white. And he

was not going to go into the bank because he would be too easily recognized, so that leaves us with only working with his admissions. That leaves us with four blacks and one white participating in this bank robbery. We know from the testimony and from the photographs that we are talking about that four blacks were robbing that bank.

I submit to you that attrements made by Jacob Mims were made at a time when these photographs weren't available or that he didn't know about them. I suggest to you that if he had known about them that he wouldn't have suggested that there were only three people in the bank because we can prove without a doubt that there were four.

But if you listen to the testimony of Agent
Green and Agent Schaller, you find out that according
to the admissions of Jacob Mims he really didn't have
very much to do with that bank robbery. Oh, yes, he
cased the place. He had looked a couple of places over
with Elmer Voight, and Elmer Voight had gone in and had
drawn a diagram of the bank. Yes, and the only reason
he drove down is because James Miller wasn't a very good
driver, so he decided that he would. Miller asked him
if he would drive the car down, the Cadillac down, to
Rochester, and his only job was to bring that Cadillac

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back, and he was to get paid seven hundred dollars for it.

Now I ask you whether this was reasonable? Why have Jacob Mims in on this bank robbery at all, unless he participated? Why do you need Jacob Mims?

We have got the admission of Jacob Mims. We know that Malachi Mims, his brother, left Buffalo in the morning to go down to Rochester in a 1972 blue Camaro, and he was alone. We know from his admissions that Jacob Mims drove the Cadillac along with James Miller and Eddie Lee Thomas. So there are four people going down. Now if Jacob was only going to do the driving, why have him there at all? Why not have Miller and Thomas ride in the '72 Camaro? Remember, they have already got a car down here that they had stolen a couple of days before that was parked in the airport. So they had the getaway car all the way down here.

We know there were only two people going back, Malachi, who was stopped by Lang, and Jacob, who was stopped by Sobolewski. Why have the Cadillac at all? Is it reasonable that that is the job that Jacob was contacted for? Isn't it more reasonable that Jacob went into the bank -- and you recall in his admissions that he said that Malachi and James Miller and Eddie Lee Thomas went into the bank, and he was just driving

around. And then when a cop came into the bank, and he saw the cop in the bank, he got scared and he went and just happened to meet up with them at the school yard.

Isn't it amazing that Jacob Mims knew what was found in the car of Malachi, that he knew that the bank robbery loot was in that car, and that some of the clothes had been placed in that car. And he admitted this to the agents. Isn't it amazing that he knew so much about this bank robbery?

Then we have the fingerprints of Jacob Mins on the getaway car. We have the photograph of the getaway car, and we have the testimony of Raleigh, who testified that he at that time lifted latent prints from the driver's side of that car. And these are the latent prints, Government's Exhibit 17 in evidence. And these were compared by the FBI fingerprint expert from Washington, and those matched the known fingerprints of Harold Jacob Mins that are shown on Government's Exhibit 18. These were taken from the defendant himself at the time of his arrest, and that they compared them, and those fingerprints, those latent fingerprints found on the getaway car, belonged to Jacob Mins, and how that process was done was explained to you by the expert using this Exhibit here, Government's Exhibit 19.

Oh, but that can be explained. Terry Woodard

so it is very reasonable that his fingerprints would be on the car, because he has driven the car before -- so those fingerprints don't mean anything. Except for one thing -- the last time that he had access to that car was the 21st. That is nine days before the bank robbery and nine days before the car was found, so it is eighteen days from the time the car was found.

You recall I asked the FBI expert, "How long does a fingerprint last?" He said, "It depends on what part of the car it is on, what the surface is." I asked, "How about glass, and if it is on a car in an enclosed parking ramp?"

"Well, five to six days."

"Could it last longer under more ideal conditions?"

"Yes, it could last longer."

"How do you judge this thing?"

"Based on the clarity of the latent prints."

"Fingerprints don't last forever?"

"Yes, they do, on books and sometimes on paper they do last a lot longer. They could last years, depending on the right circumstances."

Ask yourself whether it isn't more reasonable that if it lasted longer, that it would last maybe

twice as long as what he said, five to six days. Let's say twelve days, that it lasted twelve days. That still doesn't explain how those fingerprints got on there, because the last time Jacob Mims had that car was eighteen days prior to the time that the car was found. What kind of condition is the car kept in? She parks it in her driveway. And remember, these fingerprints are on the exterior window. She drives five miles to work. And it is parked at a parking garage during the day. Then it is out, subject to wind and rain and sun for these nine days prior to the bank robbery. We know that it is parked at the Monroe County Airport from the admissions of Jacob Mims. We know it is parked there on a Sunday. The bank robbery wasn't until a Tuesday, so we know it was at least outside for those two days. because there is no enclosed parking garage there.

Ask yourself, "Isn't it more reasonable that those fingerprints were on that car, put on that car on July 1st, 1975, just prior to the bank robbery or just after the bank robbery"?

Mr. Amoroso asked one of the witnesses whether a bank robber would use bright clothing in the bank, wearing a white hat to call attention to himself. It is not unusual at all. Ask yourself what the most important thing is in a bank robbery. If you are

committing it, you don't want anybody to see your face.

Right? So what do you do? You wear bright clothing.

So what are they going to notice? They are going to remember the clothing.

"Yes, he wore a white coat."

"He wore a blue coat."

"What did his face look like?"

"I don't know, but I remember the white hat."

"I remember the blue coat."

"What do you remember about the tall guy?"

That Lttracts attention, doesn't it? Yes, bright clothing is frequently used in bank robberies.

Now the car was identified by Tony Rose. And you remember he was one line painter that worked for the County, and he was working out in front of the bank, and he saw your black people get into the car and drive away, and he wrote down the license number very carefully, and he turned it over to the police.

And you recall that Mr. Watley, who was out using the Moneymatic machine, testified that four people, four blacks, exited the bank and got into this brown car. We know that the car was subsequently found, that the car that was found was identified as the vehicle that previously had the license plate No. 19EFL, which was the plate number written by Mr. Rose. So there is

no question that this is the car used in the bank robbery.

Then we have King from the Rochester Police

Department, who testified that he found that car, and
he took a photograph of the ignition part of that car,
and that is Government's Exhibit 15 in evidence, and
that is all smashed up. And you remember Mr. Amoroso
caked him in a voir dire question, prior to the admission of this in evidence, and he asked him, "Well,
when was this done?"

And King said it had to be done after the car was parked there.

"Why?"

"Because it has a transmission lock, and that car couldn't be driven without a key."

I asked him, "Mr. King, can't you jump it? I hered something about jumping cars."

He said, "Oh, yes, you could jump-start it, but in addition, it had a transmission lock on it."

What does that tell us? That rells us whoever drove that car had a key to it. How do we explain the key? You recall the testimony of Miss Woodard, and Mr. Amoroso was very careful to say that it was used in her presence all the time. I don't know how he got the key. Was she there all the time next to him? What

if he went to a store, and he went to another store, and he was looking at one thing, and she was looking at another, and he stops by and gets a key made? How long does it take to make a key? We do know one thing. We do know that Jacob Mims had access to that car. We do know that his fingerprints were on the car most likely sometime on July 1st and not on June 21st, some eighteen days before.

But then we get this ignition all smashed up.

I wonder why. Why smash the ignition? Well, to make it look like it was a stolen car, because if you happen to find the car just abandoned there, and the ignition isn't smashed, then maybe you are going to say, "Well, wait a minute. How did the person get the key?" And they are going to trace that car back to Woodard, who is going to be asked, "Have you ever let anybody drive this car?"

And she is going to say, "Yes, I've let Jacob Mims drive the c.r."

So they say, "Aha, let's go to Jacob Mims."

But if you smash the ignition, we don't get

back to him, because it looks like a stolen car.

There is some testimony regarding a high-speed chase. There is no question that Trooper Sobolewski said that he followed Jacob Mims some eight or nine

miles up to speeds of eighty-five miles an hour in a fifty mile an hour zone, and that during this chase Jacob Mims in the Cadillac made three different turns, one a complete U-turn where he was coming back at the Trooper.

"Well, Jacob Mims, didn't he stop at a stop sign? Don't you remember?"

"Halachi Mims stopped at a stop sign, too."

But did they stop at the stop sign, or were they waiting for traffic? And you remember that here the trooper wanted to get out, but the traffic was so heavy that he couldn't get out, and he was following what he suspected to be bank robbers. So did they stop at a stop sign to obey the law, or did they stop at the stop sign so they wouldn't get banged into by some other cars? Malachi Minus stopped at the stop sign. Jacob Minus stopped at the stop sign. Jacob speeds of a hundred and forty miles an hour.

Jacob makes a complete U-turn, comes back with the police officer following him, and takes off up a road doing eighty-five miles an hour. Yes, he stops the car.

"You didn't have to overtake him, did you, Officer?"

"No, he just pulled off to the side of the road.

He diin't have anything in the car."

He put everything in Malachi's car, so what did he have to worry about as far as being stopped right there? So Sobolewski says, "Get out of the car," and he goes up to him and advises him of his rights and tells him that he is arrested on a bank robbery charge. And Harold Jacob Mims says, "There must be some mistake. I don't know anything about it."

Did he know anything about it? Was there a mistake? Did he not know anything about it? That is a false exculpatory statement, saying, "I don't know anything about it." But later on we know that he makes admissions to the FBI agents that, "Yes," he knows a hell of a lot about it.

Ask yourself in listening to the charge by

Judge Burke whether the flight, the running away of

Jacob Mims of speeds up to eighty-five miles an hour

shows consciousness of guilt. Ask yourself whether

the false exculpatory statement shows a consciousness

of guilt.

Isn't it amazing that Jacob Mims, who says,
"No, I don't know anything about this. There must be
some mistake," and all of a sudden comes up with things
that are just absolutely amazing, like the bank was
cased the day before and that the police officer entered

aç .

the bank. He could have been driving by, of course; that the school yard is 2.8 miles from the bank; that a practice run was made that morning; that he knew who exactly was involved. When he was talking about casing the bank, you remember him saying that Miller went in the day before and cased the bank, and he was wearing a white hat and had a light beard, and we know that Ford took pictures of that, and those pictures are in evidence. But I want you to notice something about these photographs. There are four of them, and they show a sequence. They show Miller, was you remember Ford described by pointing an arres -- ut look not only at Miller. I want you to take a look at this fellow over here (indicating), who was walking out the front door, and look where he is looking. He is looking into the vault area. As he walks towards that door, his eyes are glued on the vault area, and then he goes out the front door. Look at that profile. Look at the glasses, and then look at the defendant.

MR. AMOROSO: Your Honor, I'm going to object and move for a mistrial.

THE COURT: Objection is overruled.

MR. AMOROSO: Exception, Your Honor.

MR. HOULIHAN: Examine the side view of the fingerprint card and compare it to that photograph.

MR. AMOROSO: Your Honor, I object again. He is not commenting on the evidence now.

THE COURT: Objection is overruled.

MR. HOULIHAN: Your Honor, both of these items are in evidence.

Take a look at those. Look at it very closely.

And you remember the testimony of Green and Schaller,

I'm sure, as to the admissions made by Mims. On the

way back from Batavia we got this gratuitous statement

from Mims that says, "Well, I will plead guilty to

conspiracy. I would like to do that."

What has he admitted to? He has admitted to the agents that he assisted in the planning of that bank robbery. Now very carefully, he stated he was never into that bank, according to his admissions, that he never put foot into the bank. But we have got circumstantial evidence that shows that he had to be the fourth person in that bank. He only describes three people going into the bank, but he knew too much about it. Remember, he was the guy that rejected a couple of banks and then decided with Earl Voight that they were going to try this Marine Midland Bank near the Kodak building.

But if you are not satisfied with that evidence, ladies and gentlemen, I submit to you that you don't

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have to be satisfied with the circumstantial evidence, that you can find Jacob Mims guilty on the basis of his admissions and on the basis of the charge of siding and abetting.

Now the conspiracy charge says if two or more people agree to do something that is criminal, then --

MR. AMOROSO: Your Honor, again, I'm going to object. I don't mean to interrupt the summation, but --

THE COURT: I'm not going to repeat the admonition again. If counsel says anything in this statement that is not substantiated by the evidence, put it down to argument. Now I am not going to say that again.

MR. HOULIHAN: There are certain overt acts that must be proved in the conspiracy. The overt acts don't have to be criminal acts in themselves. They just have to be proven -- one of them has to be proven in order to prove that the conspiracy existed.

On or about July 1st, Harold Mims traveled of from the vicinity/Buffalo to Rochester, New York. That was in the admission of Jacob Mims to the FBI agent.

On or about July 1st, '75, Malachi Mims entered the bank. That was in the admission of Jacob Mims.

On or about July 1st, certain monies were taken from Marine Midland Bank and was placed in the trunk of the '72 Camaro. The testimony is that the

'72 Camero was stopped and there was a search made, and they have got photographs of the search, what was taken out of there, photographs of the money, the pillowcases and the coats are in evidence, the guns, the keys. We know that that one was proved.

The Judge will charge you that if someone advises, invites, counives an offense and side and abets the principal offender, even though he doesn't commit every act, he is as guilty as though he committed every act himself. Listen to the Judge's charge on aiding and abetting very carefully, because Jacob Mims admitted to the FBI agent that he assisted in the preparation and gave advice in this bank robbery and that he was to receive part of the loot, and he told Schaller this on the lst, for his participation in this bank robbery. Ther later on in another admission to the agents, he said that he was going to get seven hundred dollars to drive Miller's car.

He doesn't have to do every act himself. Was the life of Richard Ford assaulted? Yes, it was assaulted. We have got photographs as to that. We have got that double-barreled sawed-off shotgun pointing right at Ford. Do I have to prove that that was Harold Mims? No, because he aided and abetted in the commission of that crime according to his own admissions

to the FBI agent.

So I submit to you, ladies and gentlemen, on the basis of the circumstantial evidence, you may make a finding of guilty on all three Counts of this Indictment, using the circumstantial evidence, your life experience and your common sense. But if you reject that, then on the principle of aiding and abetting, the principles in the commission of this crime, and based on the admissions of Jacob Mims to the FBI agents, you may make a finding of guilty on all three charges, and both of them together, ladies and gentlemen, should be considered, and I ask you to return a verdict of guilty on all three Counts against Harold Jacob Mims, the defendant here.

Thank you.

(Rebuttal Closing Statement by Mr. Houlihan.)

MR. HOULIHAN: Ladies and gentlemen, I want to take a few minutes for rebuttal to answer nome of those questions relied by Mr. Amoroso.

First of all, with regard to the Indictment, there are no unindicted co-conspirators in this Indictment. The fact that this Indictment names Jacob Mims and Malachi Mims doesn't mean that there isn't some

other Indictment naming the other parties to this case. It doesn't mean that there isn't any other evidence against other people, that it would not be admissible in this trial against this defendant. We are not trying Elmer Voight in this case. We are not trying James Miller in this case. We are not trying Malachi Mims in this case. We are not trying Eddie Lee Thomas in this case. We are trying Harold Jacob Mims.

And the fact that evidence against those people aren't in this case doesn't mean that it doesn't exist. For example, the FBY expert testified only to the fingerprints on direct examination of Harold Jacob Mims. On cross-examination, he said, "Well, did you find any other fingerprints on the car?"

"Yes, I did, Malachi Mims' fingerprints."

But I didn't bring that out. Why? Because

Malachi Mims isn't on trial in this case -- just Harold

Mims is. So don't conclude that those people are Scot
free. And whether they are indicted depends on whether

a Grand Jury feels there is sufficient evidence to

indict them. But don't look at what is not here. I

didn't have plaster casts of the tires made. I didn't

dust the footgrints leading from the bank. Look at

what we have got and not what is missing.

Mr. Amoroso says, "Well, what happened to the

briefcase? What about the briefcase? Why wasn't that dusted for prints?" How do we know that it wasn't, and if it wasn't they didn't find any prints, so why talk about it. And if it was and they found prints, and it is not against Harold Mims, what is that relevant to this case?

"And what about the clothes? Why didn't you bring the clothes in and show them to Jacob Mims?"

"Jacob, did you wear this jacket?"

And let him say, "Yes," or "no." Ast yourself, if you brought the photographs to Mr. Mims and said, "Jacob, you said there were three people, and these photographs show beyond a reasonable doubt that there were four," what would he have said?

Mr. Amoroso says, "I accuse Voight, Malachi, Thomas, Miller and an unidentified black male."

The man has made a statement and said who was involved in the bank robbery. He said three people entered the bank. He said an unidentified black male. Look at those pictures and tell me if there is a white guy robbing that bank. Look at those photographs.

There are white people in those photographs.

The checked out the Copeland lead? You know this was a team effort. The FBI investigated, the

Department, the Sheriff's Department, the Gates Police, twenty-five agents -- everybody had separate responsibilities. Now if all those people got together and said, "This is what I found. Let's make this statement more in line with what the evidence we have got said then we would come in here and we would say, 'Wait a minute. Isn't it a fact that you talked with other investigators and you knew at that time that that car belonged to Terry Woodard and that Jacob Mims had driven it?'"

And you just put that in the statement because you wanted to match it up, match the evidence with what his statement said. That is a lot of baloney. I asked the agent on the stand, "Do you sat anything in that statement that he doesn't say?"

"No."

"What if he tells you something that you know is wrong? Do you change it and make it right?"

"No. I put down exactly what he says."

"Is this normal FBI procedure? Have you been doing it for the period of time that you have been in the FBI?"

"Yes. This is what we do."

Remember that grandstand play when Mr. Amoroso comes up to Mr. Green and says, "Where in that 302, Mr.

Green, does it say that Mims stated that he already made so many admissions that he could be indicated for bank robbery? Where does it say it?"

And Green reads it to him, because it haporned.

Oh, we could have had this, and we could have had that. We could have had the other thing. Decide on the evidence that is here, ladies and gentlemen.

Look at this stuff. Look at the photographs. Look at the fingerprints. There is no answer to those fingerprints.

Oh, wait a minute. "Would this defendant be dumb enough to leave his fingerprints on the car? Now we have got gloves. Mr. Houlihan identifies the gloves. There is no such thing as a perfect crime."

And you know, would these guys leave fingerprints on the car? Gee, how did they get to the bank?

Did four guys get in the car? They drive over to bank. They rob the bank, and they get in the car, and they leave. How did their fingerprints get on? We know one thing. We've got a guy putcing on gloves in the photograph. He is in the bank and you can see him putting on his glove. We know that he didn't have gloves on when he was in chat car. I think that answers that question why would this masterwind, as Mr. Amoroso characterizes him, take a car that can be traced back

to him? How can it be traced back to him if you smash that ignition to look like it was stolen and the vicinm records it as stolen? Why would that lead back to Jacob Mims? Why would you take that person's car in the first place? Well, listen. If you are stealing a car, you have to go out to find a car that you can steal. Right? That means you've got to find keys in it, or you've got to be able to jump-start it. You want to get a good car. What car do you know about? Do you just pick a car off the street? It might break down. But if you know a car that works, that would be a pretty good one, and if you take that car and it is a friend of yours and you get caught with it, that person might not press charges. So why not take a car like that? Isn't it a lot easier?

He is criticizing that they never checked out the Copeland deal. Thumley testified that it was probably checked out by somebody. Is that inconsistent? Copeland called Thurley and said that there was a white guy and a black guy acting suspicious in the middle of June. Jacob Mims says that Copeland went over sometime in June and drew a diagram of the bank. Assuming it is the same person, there is still a black guy in the car. That doesn't mean anything? Talk about smoke-screens.

And then Mr. Amoroso says that conveniently we come up with Mr. Watley. Is there any doubt in your mind that Mr. Watley was the guy that was using the Moneymatic machine? And he said, "Thurley didn't describe him to a 'T'." But he described him, and he fits the description except for the height. He said he was five foot eight, and this man said he was five foot six, I believe, or five foot five. I am not sure. All of a sudden this man has be conveniently produced.

And the "convenient Mr. Rose." Well, come on.

He is painting the road there, and he sees a car speeding away. And he is enough of a citizen that he writes
down the license number and gives it to the police.

And Phyllis MacLean, the PBI agent from Buffalo, just window dressing that she happened to be brought in. Ask yourself how the hell they could have arrested those guys coming back from Buffalo if it weren't for her, if she didn't happen to be in the room. And she said, "109EFL. Watch out for these two cars," and that brought this out, and all of a sudden those two cars come right up. Window dressing? That is meaningful.

What about the screwdriver? I didn't realize this was an issue in the case. There is a screwdriver shown in this photograph on the floor. Now whether prints were taken off the crewdriver or not is irrele-

want to this case. Who smashed the lock is irrelevant to this case. The fact that the lock was smashed is relevant. The fact that that car was used in the bank robbery is relevant. The fact that the fingerprints on that getaway car were those of Jacob Mims is relevant. The fact that those fingerprints would wear off after eighteen days when the car was found, that he used with the permission of Woodward, is important. The fact that they were probably put on July 1st is important.

We have got the evidence. There are photographs in the bank. We have got the money. We have got the admissions of the defendant. Look at what we have got and don't be misdirected. Don't have your attention misdirected by claims of who could have been here and these references to Watergate, unindicted co-conspirators. We know what that means. This isn't Watergate. This is a bank robbery, a very violent bank robbery.

And this little gun that didn't work. It didn't work -- yes. But we know the other guns did work. You wonder whether the person using that gun, whoever that might be, knew that it didn't work, or if it would be loaded if he thought it didn't work. Why wasn't a toy gun used? We know damn well that that shotgun works and we know from the photographs it was aimed right at Ford. And we know that Eldridge was told if she

didn't open it the next time to plug her.

He said, "Obviously, the FBI didn't follow up."

Who said they didn't follow up? These witnesses, and particul- ly those witnesses didn't follow up because they had their specific duties to do one thing. It doesn't mean that it wasn't followed up by some other agents.

Let's look at this clothing. Mr. amoroso says, "Well, I brought this clothing down. Why didn't they match that up?"

Why didn't he bring the other stuff down if he thought it was important? The witnesses were on the stand. Is it important? Mr. Amoroso says, "I put in this evidence. Why didn't they compare this evidence to the clothing worm in the bank?" Because the statement of Jacob Mims says as it was testified to by Green and Schaller is that the guns and the clothing that were used in the bank robbery were put in the trunk of the car. Obviously, they changed clothes.

"How can you run that fast with this kind of shoes, with these high heels? Why would you use those?"

Well, maybe you wouldn't use those. Isn't it interesting that the tag is still on the bottom of these shoes, and perhaps indicating that they were just recently purchased. Isn't it interesting that there is

not very much wear either on the heels or the soles of these shoes. And isn't it interesting, ladies and gentlemen, that if you take this shirt (indicating) and you match it up to this jacket, you will find they are the exact --

MR. AMOROSO: I'm going to object, Your Honor.

THE COURT: This is argument. I'm not going to say a word more about that. I have admonished the jury sufficiently.

MR. HOULTHAM: This shirt in evidence matches up to this jacket in vidence (indicating).

Look at the evidence in this case and give it careful consideration, ladies and gentlemen, and return your vertict.

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